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TECHNICAL REPORT

AN INVENTORY OF POSITIVE COMPLIANCE PROGRAMS IN THE U.K., AUSTRALIA, AND U.S.A.

Liora Salter
Simon Fraser University

July 1988

TR1991-15e

UNEDITED

Research and Development Directorate /
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Introduction

In August 1987, the Department of Justice commissioned Ellen Baar to conduct a study of the methods of achieving regulatory compliance, stressing those approaches in Australia, Britain and the United States that relied upon preventative programs and initiatives. The study was also to include an initial inventory of positive compliance programs, with a description and evaluation of the success of each program, and an analysis of the different approaches identified through the inventory.

This volume – Volume II – constitutes an initial inventory of more than one hundred and fifty (150) programs and initiatives designed to achieve preventative or positive compliance with regulatory intentions. It serves as a background document to the descriptions and evaluations and the overview provided in the main documents submitted in fulfillment of the contract. It also serves as a handy reference for anyone seeking guidance on the variety of methods used to achieve regulatory goals.

The inventory includes three countries, Australia, Britain and the United States. The reader is reminded that the legislative systems, political cultures and regulatory environments in these three countries are very different. Because of this fact, comparisons between programs in different countries are usually neither appropriate nor very useful. Similarly, it is essential to examine the legislation carefully to determine whether and how the experience in other countries might be applied to Canada. A companion volume on the Canadian experience would be an asset, but it was not commissioned at the time when this study and inventory were being completed.

Methodology

The inventory was developed primarily from the published literature available to researchers at Simon Fraser University (and the University of British Columbia). It was supplemented by materials received by Ellen Baar from Australia, Britain and the United States in conjunction with the larger study. Journals were searched, bibliographies pursued and references were examined. Few of the programs listed in this inventory were described in terms suitable for their inclusion in the inventory. For this reason, extensive revision and syntheses of the materials were required.

For each item in the inventory, several kinds of different information has been provided. In some cases, there is a **program title**, and if so, this is listed. If **dates** are relevant and available for the initiation and termination of the program, they are provided. It is important to note that the initiation date may be different from the date of the mandating legislation. Where available and relevant, the citation for the **relevant legislation** has been included, and copies of the appropriate sections of the legislation are located in Appendix 1.

The **purpose** of the regulatory program is that stated in its legislative mandate. The **procedure to achieve compliance** is a description of the regulatory program with an emphasis on its mechanisms for achieving compliance. **Responsibility** indicates the responsible authority for carrying out the regulations. **Enforcement** refers to the mechanism of achieving enforcement. In some cases, information was not available with respect to one or more aspects of the item in the inventory.

Evaluation refers to the success or problems of the regulatory program. The evaluative material is taken from published sources only. It does *not* represent the viewpoint of the author of this report, but rather the assessment drawn from the available literature.

The descriptions of the inventory items have purposefully been made very concise, so that the inventory can function as a handy reference.

Limitations and Constraints

The inventory cannot be considered to be complete in the sense of including all possible programs and initiatives. The limitations of the published material are all too evident in this report. The purpose of this inventory was not to identify each and every program or initiative, however. This task would have been impossible because many programs are not documented (are conducted in an informal manner) and most are changing rapidly. The purpose of the inventory was to provide a comprehensive survey of the *types* of programs and initiatives, particularly stressing those with a preventative or "positive" approach. The inventory is reasonably complete with respect to the types of programs.

Once a program was identified, background material about it was sought. Time and resources set the constraints for the search. Government handbooks, annual reports and government reports served as useful sources of material, and where relevant and available, the legislation was obtained and included in the inventory.

Organization of the Inventory

The inventory is organized and coded for easy cross-reference and analysis. The coding is as follows:

(1) The primary division is among the sampled countries, Australia, (AU) Britain (UK) and the United States (US).

(2) The secondary division concerns the area of regulation, Environmental (E), Occupational Health and Safety (O) and other (X) (including consumer safety).

(3) The tertiary division concerns the type of program or initiative, whether designed to be a comprehensive regulatory scheme (a), or designed to faciltate or speed up the regulatory process (b), or designed to secure enforcement (c). Thus, a regulatory scheme for pesticides would be classified as (a). A program for dispute resolution would be classified as (b). A program of incentives or penalties designed to ensure effective enforcement would be classified as (c).

Within each category, the items in the inventory are numbered consecutively. This type of pagination -- which relies upon the codes as well as the consecutive numbering of items in the inventory -- is designed to allow its users to add other items in each classification.

A typical code, then, might look as follows: US - E - b - 34. This code would indicate that the program was from the United States and that it was in the area of environmental regulation. It would indicate that the program was designed to facilitate regulation (perhaps a form of mediation). It would indicate that the item was number 34 in the section US-E-b. The following item in this classification would be US-E-b-35.

Some Concluding Comments on the Inventory

The information sought for the inventory concerns four types of programs and initiatives designed to secure regulatory compliance. They are as follows:

(1) programs which are pro-active and preventative in manner;
(2) programs which focus principally on incentives and persuasion techniques;
(3) programs designed to facilitate conflict resolution;
(4) programs which emphasize non-criminal sanctions.

If, however, one examines the items in the inventory, it is evident that few programs or initiatives conform exclusively to any one of these types of positive compliance. Indeed, it was not possible to code the items according to the type of program designed to secure regulatory compliance. There are a number of reasons why this is so.

First, almost all of the items in the inventory combine several approaches, both with respect to the general strategy for achieving compliance and with respect to enforcement mechanisms. Typically, an educational program will be combined with a mechanism for dispute resolution, which in turn will be combined with criminal sanctions (as a last resort).

Second, regulation grows in a piecemeal fashion, and new legislative provisions (reflecting perhaps a new approach to securing compliance) are grafted onto existing legislation. Thus any attempt to characterize the approach taken in a single program of regulation in unidimensional terms is unlikely to succeed.

Finally, regulatory schemes are unique. What might be called a "pre-audit" program in one country (or even with respect to one regulatory program) might well differ in significant ways from a "pre-audit" program in another instance. Grouping both together as "pre-audit" approaches would disguise the complexity of each program, to the detriment of understanding.

Obviously, for the purposes of analysis, it is useful to group various regulatory schemes together. The point to be made is a simple one: the classification of program types is a heuristic device, designed to aid understanding. It seldom if ever permits the investigator to classify actual programs into neat categories according to the type of positive compliance.

It is generally assumed that the purpose of positive compliance programs is to eliminate reliance upon criminal sanctions for regulatory non-compliance. If a single conclusion can be drawn from this inventory, it is that new initatives designed to secure positive compliance are usually combined with some form of criminal sanction, at least as a last resort. In fact, the term "positive compliance" refers to an approach to regulation which relegates *as much as possible* to an administrative rather than a judicial process, and relies -- to the greatest extent possible -- on incentives and methods of conflict resolution to achieve regulatory objectives. In addition, the term positive compliance refers to the use of market mechanisms where possible to achieve regulatory goals. For example, a regulatory scheme that provides special privileges for those who comply with regulations is an example of a positive compliance program, even if it is administered through a regulatory agency that has access to criminal sanctions to deal with non-compliance.

The interest in positive compliance is a recent phenomenon. As the items in this inventory demonstrate, many of the so called positive compliance programs were set into place more than a decade ago. Moreover, much of what is commonly referred to as positive compliance (dispute resolution, mediation etc.) is reminiscent of the type of regulation common in Canada prior to the 1970s. In this early regulation, emphasis was given to consensus building and methods of conflict resolution, and adversarial processes were unusual.

As a cautionary note, it is important to remember that many of these older style programs have been replaced with more public, adversarial and even judicially-oriented programs since 1970. This has occurred as a result of public demands for accountable regulation.

Some of the items in the inventory represent genuinely new and exciting innovations in regulation, of course. In seeking to emulate the best of the positive compliance approach, it is useful to keep the historical picture of the evolution of regulation in mind and to address those factors which made early regulatory programs seem unsatisfactory to the public in the years between 1970 and today.

Country: US Code: US-E-a-1

Type of Regulation: Environment

Name of Agency: Department of the Interior; Office of Surface Mining (OSM)

Program Title: Abandoned Land Mine Program and Federal Permitting to Promote Environmental Control

Initiation and Termination Dates: 1977

Relevant Legislation: Surface Mining Control and Reclamation Act, Sect. 102(a)(g) 30 USC P.1253

Purpose: To assist States in developing and implementing a program to assure that surface mining is conducted in such a manner as to protect the environment; to set minimum nation-wide standards.

Procedure to Achieve Compliance: To establish minimum mining and reclamatory performance standards. Firms pay fees in order to support the abandoned mine reclamation program. Production is self-reported and verified through inspectors (Federal and State). Permits are custom designed. There is a transitional mechanism, provided through phased implementation until States enact programs which are approved by OSM.

Responsibility: States assume exclusive jurisdiction over non-Federal lands provided they adopt a program based upon Federal criteria. Federal and State inspectors share joint responsibility, this may create conflicts as State inspectors are more flexible. The Federal Permitting Program issues permits and assesses and collects civil penalties under Title V.

Enforcement: Through permits being withheld, through reclamation recommendations and administrative penalties, through cessation orders.

Evaluation: Tough enforcement resulted in litigation problems. OSM has not collected up to $200 million in penalties as there is no system to track multiple offenders. The Permitting Program initially provided strong environmental controls, yet poor program management, which led to lenient enforcement and 3rd phase internal consolidation. There is a lack of an adequate management information system and poor external relations measuring conformity rather than performance.

Congressional criticism suggests that there is inaequate data on compliance, a lack of longitudinal data, and inadequate emphasis on accountability. In 24 States, the emphasis of the regulatory program has been on measuring conformity with procedures rather than measuring performance. There are no provisions for public comment. A House Committee on Governmental Operations concluded that "the agency had failed miserably" in its duty to assess and collect civil penalties and questioned its ability to administer the collection of reclaimation fees etc."

Strategies for correcting deficiences have not been evaluated. In addition, the program has been criticized for not being flexible enough and for the inabilites to collect fees and fines. While the Institute for Urban Wildlife praised the program, some regulations are unclear and stronger uniform enforcement is needed.

Reference: US Department of the Interior, Management Review of the Office of Surface Mining, 1985 (85-26704); Symposium reported in West Virginia Law Review, 1986, Vol 88, p 523; The House of Representatives Report #206, 99th Congress, 1st session, 1985; National Institute of Urban Wildlife, "Environmental Reclaimation and the Coal Surface Mining Industry", 1985.

Country: US

Code: US-E-a-2

Type of Regulation: Environment--Water Quality

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Variance agreements--Thermal Pollution

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Law of Water Pollution Control Act, 1976, Sect. 316(a); Clean Water Act 1977, 33 USC P. 1326(a) 1976; 33 USC P.1311(e) (b)(2)(A) (1982)

Purpose: To individualize decision making to particular ecological, technical, and economic circumstances; to increase efficiency and to maintain a balanced population of fish and wild life.

Procedure to Achieve Compliance: Through the creation of 'fundamentally different factors' (FDF), to issue variances when the source has demonstrated thermal effluent limitations which ensure that fish and wild life are protected and that limitations are more stringent than necessary. The Sect. 316(a) variance procedure requires decentralized permit-issuing officials to identify which water temperatures will protect indigenous biotic populations. Effluent limitations are reviewed at least every 5 years.

Responsibility: It is the statutory right of the administrator to set effluent limitations. The EPA administers variance agreements and creates categorical standards with reference to decision making. There is the possibility to appeal decisions through the courts. The Supreme Court stresses uniformity.

Enforcement: Through monitoring.

Evaluation: There is no assurance that the individualized process will produce consistent treatments. Officials are reliant upon information given by polluters. The process has turned into a wholesale exemption from the Act. Individualized permits result in high decision making costs, frequent litigation, inconsistent results, persistent delays and increased opportunities for manipulative behavior. The placement of individual facilities within a set of categories and subcategories leads to debatable judgements. Individualized decison making frequently proves ineffective: 20% of dischargers contest permit conditions and claim FDF variance; approximately 37% of all permits are contested--about 50% of these resulted in changes favorable to the discharger. There is only minimal citizen involvement in the hearing process, they are involved only for highly visible dischargers. The process is a lengthy one.

References: H. A. Latin; "Ideal vs. Real Regulatory Efficiency" Stanford Law Review, May 1985.

Country: US

Code: US-E-a-3

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title Discretionary Contractor Listing Program

Initiation and Termination Dates: 1986

Relevant Legislation: No particular reference

Purpose: To provide for the withdrawal of incentives through delisting in order to promote mitigation of harm--in combination with noncompliance penalties, to give the EPA more power to achieve compliance.

Procedure to Achieve Compliance: Through the withdrawal of grants, loans and contracts through publication in the Federal Register after criminal conviction and the issuing of fines; to enforce mitigation procedures; and to prevent recurrance. Discretionary delisting to take place after proof of recurring non-compliance (i.e. 2 or more violations).

Responsibility: EPA; the Listing Office.

Enforcement: Under the Clean Water and Clean Air Acts, to delist in the Federal Register, to enforce the payment of fines and mitigation procedures after non-compliance orders.

Evaluation: In EPA's view, this program constitutes a powerful sanction. The procedure should be supplementary in order to enforce a decree.

References: Memo from Thomas L. Adams Jr. on the subject: Guidance on Implementing the Discretionary Contractor Listing Program, Nov. 26, 1986.

Code: US-E-a-4

Country: US

Type of Regulation: Environmental/Safety and Health

Name of Agency: Office of Surface Mining (OSM)

Program Title: Performance Standards

Initiation and Termination Dates: 1979

Relevant Legislation: Surface Mining Control and Reclamation Act. Revisions 1979. 30 USC 1251, 1265

Purpose: To provide performance standards to permit more freedom of action for regulated companies to reduce compliance costs, and to allow freedom to discover new and more efficient compliance technologies.

Procedure to Achieve Compliance: Enforcement is delegated through performance rather than design standards. This allows for more cost-effective design and engineering strategies. Performance standards are typically measured retrospectively, although monitoring of sites to ensure compliance is continual.

Responsibility: State agencies

Enforcement: Agencies may be required to perform detailed engineering analyses to determine whether proposed designs will meet performance standards. This has led to an increase in discretionary powers at the State level as well as an increase in negotiations taking place between operators and State bureaucrats.

Evaluation: The performance approach requires greater technical sophistication on the part of State and Federal employees so that they may interpret and apply regulations on a mine-by-mine basis. The high attrition levels at OSM field offices and widespread funding and staffing difficulties raise questions concerning the capacity to adapt to the sophisticated techniques. Enhanced flexibility may lead to less effective standards for environmental protection and safety. Compliance determination is more difficult since it requires greater technical expertise and a greater committment than most State programs can afford. The retrospective measurement of performance standards make changes or modifications more expensive.

References: Fix, Michael; "Transferring Regulatory Authority to the States" in The Reagon Regulatory Strategy ed. by George Eads; Washington, 1984, pp.173-174.

Code: US-E-a-5

Country: US

Type of Regulation: Environmental

Name of Agency or Department: Environmental Protection Agency (EPA)

Program Title: New Source Performance Standards

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Air Act; 42 USC Section 7411 Supp III, 1979

Purpose: To set standards of performance for new sources of pollution in each State.

Procedure to Achieve Compliance: There is a general requirement that standards are uniformly applied to categories of process or technology for each source category in each industry. It is important, as well, to impose the same requirements upon all new or existing plants in order to discourage firms from relocating to areas with high environmental quality. The performance required is a function of the average industry costs and the technological feasibility of improved performance.

Standards are set on a uniform national basis for the 'prevention of significant deterioration areas'. However, the 1977 amendments require a case-by-case determination of the required controls. Controls based on the best available technology must be set for each generic source of pollution using the best system of emission reduction. In addition, there must be an adequate demonstration of the system used. In areas that have not met primary air quality standards, new sources must employ the lowest achievable emission rate (LAER). New sources may have to purchase offsets from other polluters, these are guaranties from other polluters that they will reduce their emissions of the same pollutant. Formally speaking, this is referred to as a transfer of pollution rights.

Responsibility: New source standards are the EPA's responsibility.

Enforcement: Performance standards specify results rather than techniques.

Evaluation: New source standards impose much higher costs per unit of pollution removed than most state standards for existing sources of pollution. The definition of new source has created considerable confusion. For example, if a new facility is constructed in an existing plant, does this constitute a new source? After court rulings, the EPA redefined new source so that plant modifications do not trigger the new source requirement. The new definition for non-attainment areas has been nullified by the courts.

References: Steward, Richard B; "Regulation, Innovation, and Adminstrative Law: A Conceptual Framework"; California Law Review Vol. 69 No.5, September 1981, pp 1263-1377. Crandall, Robert W. Controlling Industrial Pollution, Washington, Brookings Institute, 1983.

Code: US-E-a-6

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Permit Requirements

Initiation and Termination Dates: 1972

Relevant Legislation: Clean Water Act 33 Usc Section 1311(b)

Purpose: To reduce the net amount of pollution in the face of continued economic growth.

Procedure to Achieve Compliance: To create nationally uniform technology-based effluent standards, established industry-by-industry, and applied to all sources in an industry. The strategy is to diffuse state-of-the-art technology nation-wide, regardless of the environmental benefits of employing it in a given location. Implementation is to be achieved through 2 stages. In the first stage, adoption was required by 1977 of the best practicable technology. The second stage, by 1983, was to be the adoption of the best available technology (BAT). BAT requirements are roughly equivalent to those for new sources in the same industry under new source pollution standards. In 1977 amendments were adopted which (a) postponed the compliance deadlines and (b) postponed the provision of relating uniformity by introducing waivers and by differentiating several general categories and corresponding effluent standards.

Responsibility: Congress has set standards which reflect the desire to ensure equal treatment of competitors and in order to discourage industrial relocations. Both the State and the EPA have enforcement authority.

Enforcement: Accomplished through the use of administrative and judicial procedures.

Evaluation: There is little flexibility in dealing with specific cases. The delays of enforcing sanctions work to the economic advantage of the emitter. The existence of capital intensive control equipment does not guarantee compliance. There is a need for improved monitoring and enforcement techniques. The adoption of this strategy reflected Congress' fear of the potential delay and obstruction of enforcement efforts under an "ambient" approach. Control over industrial disruption has generally proven more powerful than the forcing of technology. Drastic enforcement action was not supported. The burden is on the government to prove that technology is available to achieve performance requirements. There is no data available upon whether this approach has stimulated the invention of new technologies.

References: Stewart, Richard B; "Regulation, Innovation, and Administrative Law: A Conceptual Framework" in California Law Review Vol. 69, No.5 September, 1981. pp. 1263-1377. M. Freeman; "Air and Water Pollution Policy" in Current Issues in US Environmental Policy, ed. Paul R. Portney. Baltimore, John Hopkins University Press, 1978, pp. 12-37 (esp. 36,37).

Code: US-E-a-7

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Wastewater Discharges--Self-Monitoring

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Water Act eg. 33 USC Section 1311(h)(3)

Purpose: To establish rules setting a nationally uniform technology-based effluent limit for classes and categories of both old and new sources, for both direct and indirect (sewage) discharges. Rules will cover self-monitoring, reporting and compliance.

Procedure to Achieve Compliance: A permit, issued by the EPA, is required. The EPA can delegate this responsibility to the State involved. The rules set stringent limits on effluent at the individual sources and provide technical guidelines for achievement. Permits are granted for 5 years.

Individual water quality-based effluent limits have been replaced by general surrogate "indicator" pollutants and the use of generic aquatic 'toxicity' measurement as a basis of control. Phased out were a set of minimum, uniform technology-based requirements and stringent controls.

There is a requirement for waste-stream monitoring and frequent sampling. The sampling results are submitted to the EPA or the State involved and publicized. This forms the basis for enforcement action.

Responsibility: The EPA issues permits which specify the limitations imposed. Compliance monitoring is based on a self-reporting system which is supported by periodic inspections.

Enforcement: The program sets out the possibility of the full possible use of civil and criminal penalties and administrative and judicial injunctive relief. New sensor technolgy is being tested, so that the inspector can do analysis at the site. In time, this technology may permit continuous monitoring.

Evaluation: Under this program enforcement actions have declined. The percentage of checks with acceptable limits declined; 82% of dischargers exceed the monthly permit level at least once in 18 months. As well, permits had expired and not been reissued.

Municipalities have significant records of non-compliance. Self-monitoring is ineffective; verification of reports is insufficient; and there is general difficulty in enforcing standards. According to the Yaeger study, when larger firms challenge regulatory actions in court, they are not sanctioned for violations during the trial. Construction violations are more rigorously sanctioned.

The EPA and the States made little effort to identify the many pollutors who did not even apply for permits; applications were not processed in a timely manner; and a disproportionate burden was placed on smaller companies. The dependence on data of monitoring and self-monitoring is a weakness given that 40% of polluters examined failed to submit discharge monitoring reports or failed to provide all required data. Thirty-six percent did not maintain reports at all. Of 739 inspections, there were 393 incidents of 1 or more violation; 75% resulted in notices of violation specifying a date for compliance; 25 compliance orders were issued (none included penalties); there were 5 civil actions, 8 civil penalties and 1 criminal penalty.

References: H. A. Latin "Ideal vs. Real Regulatory Efficiency" in Stanford Law Review, May 1985, Vol. 37. Peter C. Yaeger, "Structural Bias in Regulatory Law Enforcement: The Case of the US Environmental Protection Agency" in Social Problems, Vol.34, No. 4, 1987.

Code: US-E-a-8

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Categorical Standards and Variance: Water Pollution

Initiation and Termination Dates: 1977

Relevant Legislation: Clean Water Act, 1977, Amend. 1982.
33 USC Section 1316 (a)(1)(1982); 1311 (b)(1)(a); 1311 (b)(2)(a); 1314 (b)(1); 1314 (b)(2); 1311 (c); 1314 (b)(4).

Purpose: To promulgate nationally uniform rules setting technology based emission limits for major categories of industrial sources (Section 110).

Procedure to Achieve Compliance: The EPA sets standards for (1) new dischargers to use "best available demonstrated control technology"; (2) for existing dischargers to achieve "best practicable control technology currently available" by 1977, and "best available technology economically achievable" or the "best conventional pollutant control technology" by 1984-1987.
Section 113(a)(4) permits administrative discretion to allow for extensions of discharges.

This legislation is tailored to the technological and economic characteristices of categories of the polluting industry. Congress rejected the notion that technology-based standards must be adapted to particularized circumstances in favor of an insistence upon uniformity. However, particularized variances are granted, although at first, indefinite compliance extensions were curtailed with the 1977 CAA Amendments (42 USC Sect.7413(d) supp.IV1980) which set a time limit over State approval of extensions. The EPA is authorized to allow variance with no procedural safeguards (Section 113).

Responsibility: Permits are issued to comply with national standards or performance, with an allowance for variance arrangements. Notice and comment rulemaking procedures prevail. The notice of proposed rule is placed in the Federal Register and interested persons have the opportunity to comment before the publishing of the final rule and rationale.

Enforcement: The 1977 Amendments curtailed the EPA's authority to issue indefinite compliance extensions. Administrative Orders to implement variances are negotiated in informal conferences. Public participation is non-existent.

Evaluation: Over one-half of all challenges for variances resulted in modifications of the permit conditions or other changes favorable to the discharger.

References: H.A. Latin; "Ideal vs. Real Regulatory Efficiency" in Stanford Law Review, May 1985.

Code:US-E-a-9

Country: US

Type of Regulation: Environment

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Compliance Agreements

Initiation and Termination Dates: 1982

Relevant Legislation: Water Pollution Control Act Amendments; (33 USC *1317 (1982) Section 316(a).

Purpose: To achieve administrative settlements; to improve and implement standards relating to environmental control.

Procedure To Achieve Compliance: Effluent limitations are based upon technological feasibility. Stringent standards for toxic effluents were not implemented through the EPA . Environmental groups negotiated an agreement with the EPA to achieve controlling and implementing standards. A consent decree approved the agreement. When the EPA fell behind, environmental groups moved to enfore the consent order. A new agreement with the EPA provided plaintiffs with detailed progree reports in return for more time and flexibility in implementing the decree.

Responsibility: The EPA negotiates and issues decrees and agency policy is modified after it has been set.

Enforcement: Through consent decrees and negotiated agreements.

Evaluation: This procedure may undercut open administrative policy making and the traditional legislative role of Congress. However, it does represent a pragmatic search for an intermediate solution.

Code: US-E-a-10

Country: US

Type of Regulation: Health/Environmental--Toxic Substances

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Permit Issuing/Direct Regulation

Initiation and Termination Dates: 1976

Relevant Legislation: Toxic Substances Control Act 1976 15 USC Par. 2601-2629 (1976); Section 112 Clean Air Act; Section 6(b) Occupational Safety and Health Act; Section 409 Federal Food, Drug, and Cosmetic Act; Section 3 Federal Insecticide, Fungicide, and Rodenticide Act.

Purpose: To curb the introduction of toxic chemicals and other substances into the human environment.

Procedure to Achieve Compliance: The EPA is given wider authority to require testing of any new chemical or new uses of an existing chemical when it may present unreasonable risk. The industry has to prove that the new product is safe. Full testing by the manufacturer is not automatically required for each and every new chemical. The manufacturer submits limited information. The EPA, after reviewing this information, must demand full testing of substances it believes might pose substantial risks, and must do so within a reasonable period of time. The costs of testing is borne by the manufacturer. The EPA can also demand safety testing of chemicals already on the market (limited to 50 substances a year) according to Section 4. There is a pre-manufacturing notice scheme that combines licensing and policing. The manufacture, distribution and sale of chemical substances is controlled in a variety of ways which may range from mild labelling requirements to prohibitions and seizure.

Responsibility: The burden of proof is on the industry to show that a substance is safe before being put on the market. EPA officials decide which chemicals to investigate. Administrators have broad discretionary powers to balance costs, benefits, and technological factors in determination of the required level of performance. Section 10 provides that the EPA carry out research, testing, and monitoring.

Enforcement: Section 6 allows the EPA to levy damage and liability claims, to set labelling requirements and licensing, and to carry out strict prohibitions, seizures and recall of imminently hazardous substances. Environmental audits are also being used as an enforcement mechanism, by drawing attention to heightened management interest. The auditing provisions are more likely to be proposed when there is a pattern of violations.

Evaluation: Effectiveness is dependent upon the EPA's scientific and bureaucratic capacity to judge the substances most in need of testing. The EPA has been bogged down in data and scientific controversy, slow to make decisions and locked in conflict with both the gigantic chemical industry and strident consumer groups. Manufacturers have been cautious about supplying information for fear that the EPA will not be able to keep valuable trade secrets from their competitors. There has been inconsistency among different legislation in terms of defining toxic hazard, type of regulation, degree of protection, and burden of proof. (See Table 4-4-Portney, p. 130-131.)

References: Eugene Bardach; Robert A. Kagan; "Liability Law and Social Regulation" in Social Regulation: Strategies for Reform, ed. E Bardach and A. Kagan. San Francisco, Institute for Contemporary Studies, 1982. p. 243. Paul Portney, "Toxic Substance Policy and the Protection of Human Health" Current Issues in US Environmental Policy, ed. Paul Portney. Baltimore, MD; John Hopkins University Press.

Code: US-E-a-11

Country: US

Type of Regulation: Environmental

Name of Agency: Army Corps of Engineers

Progam Title: General Permits

Initiation and Termination Dates: July 22, 1982

Relevant Legislation: Clean Water Act Sect. 404(e) Amendment 47 FR 31794, July 22, 1982; 48 FR 21468, May 12, 1983.

Purpose: To control discharge of pollutants.

Procedure to Achieve Compliance: Issuance of interim and final regulations setting out 27 nation-wide permits. Issuance of general permits; Sect. 404, prohibits the discharge of any pollutant. Sect. 404 (e) authorises the issuance of general permits on a State, regional or National basis for categories of activity that "will cause only minimal adverse environmental impact". Activities covered by general permits are typically only monitored by State or local governments and are essentially exempt from Federal review.

Responsibility: The US Army Corps of Engineers issue permits, and State or local governments monitor them. The Federal Government declared that it will no longer review a described set of actions, leaving the State to decide whether and how they will regulate those activities. Federal deference is conditioned on the existence of an adequate State program. The standards that a State program would have to meet were called into question by a memorandum from the Corps' Deputy Director to all District Engineers. They were required to implement "State Program General Permits" by May 28, 1982, whether or not the State program "measured up to Corps standards in all respects". (Fix, p. 166).

Enforcement: The permits eliminated Federal enforcement over thousands of acres of wetlands. Wisconsin and 16 other States announced they would exercise their prerogative to deny certification for a number of the most controversial general permits--this amounted to State rejection of the shift of responsibility. The Corps was forced to retain jurisdiction and to review situations on a case-by-case basis in the contested areas. These areas involved head waters and isolated water bodies.

Evaluation: Six of the 27 nationwide permits proved particularly controversial and were subsequently challenged in court. The implications were vast as there was an increase of 3% to 60% of wetlands being exempted from Federal review. In the wake of the 13 States' rebellion and strong legal challenges filed by environmental groups, the Corps retreated from its two most controversial reforms. In an announcement May 12, 1983, the Corps was willing to reconsider the wisdom of its proposal in each area. Promulgation did not have the support of key Federal agencies, the EPA and US Fish and Wildlife rejected some permits. State support was also clearly lacking. Federal checks should be sustained until State capacity has been demonstrated. Some Federal oversight will remain necessary to ensure that environmental impacts are examined.

References: Michael Fix; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy ed. Gearge C. Eads. Washington, Urban Institute, 1984. pp. 153-179.

Code: US-E-a-12

Country: US

Type of Regulation: Environmental

Name of Agency: California

Program Title: Emission limits on used cars brought to California

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Air Act, State Act

Purpose: To contribute to good air quality. To control the emissions of cars.

Procedure to Achieve Compliance: All used cars brought to California must meet emission control standards before the owner can obtain a California license plate. Those that cannot, usually can pass after carburator adjustments, tune ups, etc. If these procedures fail and only expensive repairs can make a car passable, the owner may petition for an exception. This procedure aims to avoid imposing costs on individuals that greatly exceed social benefits.

Responsibility: n/a

Enforcement: Refusal of Californian license plate.

Evaluation: Exemption procedure works well as only a few practices require special treatment.

References: Timothy J. Sullivan; "Tailoring Government Response to Diversity" in Social Regulation: Strategies for Reform, ed. Eugene Bardach. San Francisco, Institute for Contemporary Studies, 1982.

Code: US-E-a-13

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Banking

Initiation and Termination Dates: January 1979

Relevant Legislation: 44 FR 3274ff, 16 January 1979; 47 FR 15076, 7 April 1982; Clean Air Act, 1977, Section 120. 40 USC, 7401-7642.

Purpose: To increase the economic incentives to reduce air pollution and to promote greater technological innovations to improve air quality. To reduce barriers to modernization and litigation.

Procedure to Achieve Compliance: Through the creation of a generic rule to allow trading. Firms that are in compliance with applicable standards may store the rights to pollution that the plant was allowed under the State Implemention Plan (SIP) until they wish to use them as offsets against other sources, or until they trade them in offset transactions. The 1982 amendments liberalized the rules and allowed States to develop their own generic trading rules as long as the emission reductions were permanent, quantifiable, and enforceable. Areas that do not meet ambient air quality standards are allowed to use emission trading, substituting trading for technology in meeting reasonable available control technology standards. Trading is allowed for the purpose of coming into compliance and is used to eliminate burdensome requirements for air quality modeling. This relieves the States of the need to submit revisions of SIPs (State Implementation Plans).

Responsibility: States may develop systems of banking emissions thereby crediting reductions below the applicable standards, including those obtained by closing facilities. Details of the banking system are left to the States, but the EPA must approve the banking schemes during the SIP approval process. As long as the emission rights reflect plant compliance and the quantities can be verified, banking is generally permitted.

Enforcement: Through monitoring and enforcement actions under the Clean Air Act at the expense of the EPA or the State.

Evaluation: There is a danger of paper trades, the industry may trade the right to emit where actual pollution has, in fact, stopped. There are geographic limitations to trading. The given quantity of an emission may have different effects on various locations. There is also a problem of uncertainty created by the continuing SIP process.

References: Richard A. Lirott, Bubble Policy for Existing Sources in Practice. Michael Fix; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy ed. George C. Eads. pp.153-177. Robert W. Crandall Controlling Industrial Pollution. Washington, Brookings Institute, 1983.

Code:US-E-a-14

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Netting

Initiation and Termination Dates: December 1979, amended October 1981

Relevant Legislation: 44 FR 71779, 11 December 1979; 45 FR 52676-748, 7 August 1980; 46 FR 50766-71, 14 October, 1981; Clean Air Act, 1977, Section 120; 42 USC, 7401-7642.

Purpose: To increase the economic incentives to reduce air pollution and to promote greater technological innovations to improve air quality. To reduce the barriers to modernization and litigation.

Procedure to Achieve Compliance: (A) Non-attainment areas: there is an allowance to modify or expand sources in non-attainment areas to net out preconstruction permits and other new pollution source requirements. As long as the increased emissions from the modification were offset by reductions elsewhere in the plant, new-source requirements would not be triggered. Netting of pollution increments and decrements refers to the total level of emissions lower than the previous total level. In 1980, the EPA introduced a dual definition for new sources in non-attainment areas that included both the entire plant and individual pieces of equipment. In 1981, there was an attempt to return to the plant-wide concept to allow States greater flexibility in non-attainment policy.

(B) Attainment areas; for non-deterioration areas, the 1980 netting policy allows firms to offset any pollution increases from a major modification in a plant by reductions from other facilities within the plant. As long as this modification does not lead to increased emissions, the owner need not submit a case-by-case best available control technology requirement.

Responsibility: The 1979 netting policy was rejected by the District Court of Columbia because it would allow firms to avoid installing the best pollution control technology on new installations in existing plants in non-attainment areas. All major modifications of plants would have to include the specified technology and purchase offsets as part of an overall program to obtain reasonable further progress toward attainment. In response to the 1981 rule, the Court ruled again that plant-wide definitions were a violation of non-attainment provisions of the 1977 Clean Air Act. The non-attainment policy includes a requirement for new source standards as a mechanism for generating further progress toward triggering this new-source requirement and is therefore inconsistent with the statute.

Enforcement: Through permits, monitoring, and the enforcement procedures under the Clean Air Act.

Evaluation: Netting allows companies to avoid installing the best available technology and results in less improvement than is possible when major plant design modifications are made. The environmental benefits are not very positive. Emissions are not comparable in ambient impacts. The link of effluent limits with available technologies discourages innovations. The EPA's attempt to define new sources as the entire plant has been frustrated by court reversals and the economic impracticality of imposing technology requirements on plant modernizations. The EPA's objective was to allow new pieces or new facilities in plants to escape the lowest achievable emission rate or best available control technology. The EPA has thus succeeded in disentangling the concept of further progress of the technology requirements for plant modifications. The courts could prevent the plant-wide approach in non-attainment areas. LAER or BACT standards are maintained for completely new plants although new plant construction reflects a declining share of private fixed investment.

References: Richard A. Lirott, Bubble Policy for Existing Sources in Practice. Michael Fix; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy ed. George C. Eads. pp.153-177. Robert W. Crandall Controlling Industrial Pollution. Washington, Brookings Institute, 1983.

Code: US-E-a-15

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Emission Trading

Initiation and Termination Dates: December 1979, amended April 1982

Relevant Legislation: 44 FR 71779, 11 December 1979; 47 FR 15076, 7 April 1982; Clean Air Act, 1977, Section 120; 42 USC, 7401-7642

Purpose: To increase the economic incentives to reduce air pollution and to promote greater technological innovations to improve air quality. To reduce the barriers to modernization and litigation.

Procedure to Achieve Compliance: Through marketable rights and emission reduction credits. Rather than to require firms to meet uniform emission limits, emission trading allows sources to adopt alternative compliance strategies that would achieve the same or greater reductions in polluting emissions than would control strategies. The program consolidated a number of market-based pollution abatement reforms. The 1979 trading policy was limited and could be used only in areas that could demonstrate attainment of the ambient standards by the statutory deadlines. Since the EPA and the States had not completed many of the new SIPs (State Implementation Plans), this provision greatly reduced the use of intraplant trades. Emission trading could only be approved if SIPs were revised. This triggered a lengthy and often cumbersome process of public notice, comment, and review at both the State and the Federal level.

The 1982 amendments liberalized the rules and allowed States to develop their own generic trading rules as long as the emission reductions were permanent, quantifiable, and enforceable. Areas that do not meet ambient air quality standards may use emission trading or substitute trading for technology in meeting reasonable available control technolgy standards. This eliminated burdensome requirements for air quality modeling and relieved the States of the need to submit revisions of SIPs.

Responsibility: The EPA sets nationally uniform ambient air quality standards and the States develop SIPs (State Implementation Plans). The EPA conceives of the SIP as a collection of approved procedures for developing or changing emission limits rather than as a collection of fixed limits. Under new generic rules, many trades will be exempt from the SIP revision process and direct case-by-case Federal review. The States' generic trading rules remain subject to Federal audit and to possible override. The States' must volunteer for enhanced responsibilities under emission trading guidelines and adopt rules consistent with the Federally determined decison principles to guide program implementation. In the absence of those voluntary actions, State decisions remain subject to Federal review.

Enforcement: Through monitoring and enforcement actions under the Clean Air Act.

Evaluation: This is considered to be one of the successful regulatory relief initiatives and was developed after extensive consultation and consensus building. This was a continuum of Federal policy. Yet Ohio officials (in Fix) claim that most of the trades proposed would call for a complex, expensive technical analysis before they could be approved. The GAO study (Crandell, p.95) suggested there would be large potential gains through the reduced control costs, but an increase in regulatory problems and in search and transaction costs. Most transactions are internal through the desire of firms to keep their rights for future needs. Federal checks should be maintained where there are complex technological permitting and enforcement activities.

References: Michael Fix; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy ed. George C. Eads. pp.153-177. Robert W. Crandall Controlling Industrial Pollution. Washington, Brookings Institute, 1983.

Code:US-E-a-16

Country: US

Type of Regulation: Public Health

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Pesticide Registration: Polychlorinated Biphenyl (PCB)

Initiation and Termination Dates: 1978

Relevant Legislation: Toxic Substances Control Act, Section (6)(e); 15 USC 2605(e); (PL 94-469); 43 FR *7150-64, 17 February 1978; 44 FR *3154-68, 31 May 1979

Purpose: To protect the public from a product which is not safe.

Procedure to Achieve Compliance: The EPA is required to promulgate regulations covering the disposal of PCBs. The legislation bans the manufacture, processing, or uses of PCB in other than a "totally enclosed manner". The EPA issued two major sets of regulations: the first covered disposal and marketing; the second set implemented a ban on manufacturing, processing and use, and provided for certain exceptions as authorized by the law. The proposed rules were published for comment in 43 FR 24802-17, 7 June 1978.

The provisions were to authorize the continued use of transformers under certain conditions; to require the incineration or disposal in chemical landfill of PCB contaminated mineral oil; to implement a 5-year phased reduction of concentration of PCBs in transformer fluids; the replacement of PCB contaminated motors in mining equipment and hydraulic die casing systems; the authorization of the continued used of PCB contaminated carbonless copy paper; and the ban of the use of electromagnets containing PCB fluids.

The National Academy of Science prepared an assessment of PCB which reviewed the cost-effectiveness of alternative policy options. There were substantial industry comments in regard to the risk and cost-benefit aspect of the regulations. However, the inherent shortcomings of risk assessment makes the use of data limited. The final regulations differed in regard to disposal of PCB contaminated oil; the oil was allowed to be reused in certain high-efficiency boilers on the grounds that this was cost-effective. In addition to this, PCB containing electromagnets were defined as a totally enclosed use.

Responsibility: as above

Enforcement: The EPA is authorized to make exemptions to the ban on other than totally enclosed uses, if it finds that "such manufacture, processing, distribution in commerce, or use...will not present an unreasonable risk of injury to health or to the environment."

Evaluation: The one page economic data reports were not related in a meaningful way to the choices made by EPA. In the final rule, the EPA had no proper basis for options accepted, and for those available but not proposed; thus the EPA had no proper basis for a selection of a cost-minimizing mix of regulatory options. There was a lack of a systematic basis for making determinations of unreasonable risk according to Section (6)(e).

References: Myrick Freeman. "Risk Evaluation in Environmental Control" in Reform of Environmental Regulation. ed. Wesley A. Magat. Cambridge: Ballinger Publishing Company, 1982. pp.47-69.

Code:US-E-a-17

Country: US

Type of Regulation: Public Health

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Advisory Committees: Product Screening

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 USC 136(d); Toxic Substances Control Act, (TSCA); 15 USC 2601-2629.

Purpose: To remove inefficacious or hazardous chemicals from the market.

Procedure to Achieve Compliance: Through the assessment of cost-benefits, and through trial-type suspensions and a cancellation process. FIFRA provides explicitly for a scientific advisory committee to which the EPA must refer to for comments and for recommendations concerning those decisions which are taken to initiate cancellation proceedings or to promulgate general FIFRA regulations. In the case of TSCA, basic policy decisions about implementation methods must be made before the advisory committee can consider individual screening decisions.

Responsibility: There are statutory requirements under FIFRA for an advisory panel to provide comments and recommendations to the EPA. By implication this precludes expanding the functions of the same advisory committee or the creation of a different advisory committee to make the initial determination whether to proceed against a pesticide or to propose initiatives through the adoption of regulations. The EPA must be prepared to take the legal risk in order to limit or foreclose the manufacturer's opportunity for a trial-type hearing to litigate technical issues.

Enforcement: n/a

Evaluation: There seems to be an insufficient number of qualified experts in the field of chemical regulation who would not be disqualified by a partisan position or affiliation. The EPA has made no systematic effort to identify and recruit qualified individuals, although chemicals screening seems to present an important opportunity to use technical advisory committees. The suspension and cancellation process is clumsy and time consuming (Stewart, p. 1356) The implementation of TSCA has been undermined by the impossibility of accomplishing the task through formal proceedings.

References: Richard B. Stewart. "Regulation, Administration and Administrative Law: A Conceptual Framework." California Law Review Vol.69, No.5. September, 1981. pp.1263-1377.

Code: US-E-a-18

Country: US

Type of Regulation: Environmental

Name of Agency: Congress

Program Title: Mobile Source Emissions Control/Motor Vehicles

Initiation and Termination Dates: 1970, Amendments, 1977

Relevant Legislation: Clean Air Act, 1970, 1977. Title II; 42 USC 7521, 7524

Purpose: To control emission flows so that the air quality standards can be reached.

Procedure to Achieve Compliance: The Clean Air Act, Title II requires specific percentage reductions of HC, CO, and NO. The 1970 rules set specific targets for automobiles, requiring only a 90% reduction from existing pollution levels for 1975/76 models. The 1977 amendments added specific targets for trucks. California has had more stringent standards since 1975. Pollution control systems must be certified to work for 50,000 miles. A program for periodic inspection and maintenance is required for areas that failed to attain air quality standards by the end of 1982. The 1977 amendments reflect concern with achieving goals and allow extra time to develop alternative technologies. (42 USC *7521(b)(6)(A).

Responsibility: Emission standards for automobiles are set by Congress, not by an executive branch agency. The administrator is required to promulgate regulations requiring each manufacturer to build and to demonstrate on a regular basis the operation of vehicles that meet ambitious research objectives in nitrogen oxide control. (42 USC *5721(b)(6)(A) requires that pollution control systems are installed to meet these standards and that they do not degrade rapidly with use. The EPA has the authority to delay target dates for one year if they are unachievable despite the efforts, in good-faith, of the companies. The responsibility for emission control is on the manufacturer, not upon the actual user. Manufacturers are supposed to produce vehicles that meet standards for five years or 50,000 miles, whichever comes first. There are no limits on actual emissions once the vehicles are placed in use by owners.

Enforcement: The 1970 Act provided for rather stiff sanctions for non-compliance, for example, fines of up to $10,000 for each nonconforming auto. The fear that the program would fail was reflected in provisions for the administrative waiver of deadlines. The 1977 amendments provided for flexibility in setting noncompliance penalties for heavy-duty vehicles, including adjustment of the penalty to the degree of noncompliance (42 USC *7525(g)(3)(C). There was also a provision of waivers for a limited number of vehicles employing "innovative power train technology or innnovative emission control devices" which can be applied to mass production (42 USC *7521(b)(6)(A). The Act also contains provisions for the States to implement inspection and maintenance plans for vehicles in use if the plans would make a significant contribution to meeting the air quality goals. Vehicles cannot be sold until the EPA has certified that they meet the standards. An elaborate certification procedure has developed.

Evaluation: The deadlines set in 1970 were not achieved, and in 1977, standards were modified. It was acknowledged that it was beyond the existing technological capabilities of manufacturers to achieve the standards which had been set. This created the situation where threats cannot be used to have manufacturers comply to standards as companies can easily argue that their inability to meet a deadline will force them to abandon production altogether. Ordinarily, poor performance has gone largely unpenalized and the $10,000 fine is not credible.

It is possible to de-activate the emission control system, or to adjust crucial engine components that could greatly increase emissions. Although it is illegal for dealers to make modifications, this practice is difficult to enforce. It is not, however, illegal for private users to make such modifications.

It has been recommended that regular inspections and maintenance programs be established. Tampering and misfueling are significantly lower in New Jersey and in Arizona as these two States have inspections programs, in States that do not this is not the case (White, p.105). It has also been recommended that the burden of regulation be placed upon the individual vehicle owner through inspections. This would require uniform inspection procedures and ensure that regular inspections occur. This program could be linked to vehicle registration (Crandall, 1986, p. 106-108). The current program is inefficient, although there have been reductions in emissions, these have not been to the envisioned degree. The purchase of new, more expensive cars seems to have been discouraged over the retention of older cars.

References: Richard B. Stewart. "Regulation, Administration and Administrative Law: A Conceptual Framework." California Law Review Vol.69, No.5. September, 1981. pp.1263-1377. Robert Crandall; Howard Gruenspect; Theodor Kealer; Lester Lane. Regulating the Automobile Washington, Brookings Institution, 1986. Lawrence White. The Regulation of Air Pollutant Emissions from Motor Vehicles Washington, American Enterprise Institute, 1982.

Code: US-E-a-19

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Emission Limits

Initiation and Termination Dates: 1970, Amendments, 1977

Relevant Legislation: Clean Air Act, 1970, 1977; 42 USC, 7503(2); 7475(a)(4); 7521(a)(3)(A)(i-iii)

Purpose: To maintain or to achieve national ambient air quality standards.

Procedure to Achieve Compliance: Through permit issuing and through screening of major new or modified sources on the basis of 'best available control technology' or upon the achievement of the 'lowest achievable emission rate'. The screening is to be based upon whether the sources are in prevention of significant deterioration areas or in non-attainment areas. The permit issued does not allow an increase of pollution to already set limits in attainment areas. Implementation is through inflexible, stringent numerical increments.

The permits outline emission levels, monitoring of air quality data and emission levels through the use of three methods. These methods include: stock tests; on-site inspections of equipment; and voluntary certification by the polluter showing, through unaudited reports, that the source is in compliance. On-site inspections often occur with advance warning having been given. The company in question establishes a corporate compliance program which reviews all environmental obligations. A requirement of this environmental audit is that any violations found in self-regulated auditing will be reported.

Responsibility: Primarily through the EPA and State authority although a judicial review is possible if necessary to control agency discretion.

Enforcement: Administrative and judicial procedures are available in order to determine if a violation exists, if it does, compliance orders may be issued, and sanctions imposed. Section 113 (civil penalties) provides for penalties up to $25,000 per day. The EPA announced a penalty policy in 1979 that would sum the benefits from non-compliance and the cost to the public of the environmental degradation that resulted from non-compliance, in addition to this were added further penalties for willful violation. (See civil and delayed non-compliance penalty).

Evaluation: To issue permits with stringent increments seems to demarcate an arbitrary level of allowable air quality in attainment areas that is logically inconsistent with the ambient air quality standards previously set. The primary effect is to force new industrial developments to move to cleaner attainment areas. This may not constitute intelligent land-use planning. There is a tendency to adjust the degree of control to the ability of firms to pay. Voluntary certification requires periodic verification which is currently lacking.

The EPA has not succeeded in establishing a thorough monitoring network to ascertain compliance. There has been a 44% reduction in Federal aid for the operation of EPA mandated programs during the period of 1981-1984. The State monitoring network shrunk by 8%, for example, and there is no systematic monitoring of the actual output from various sources.

Compliance violations have increased, with large organizations being most responsible for non-compliance: for example 1% of sources violate the regulations yet are responsible for one quarter of the hydrocarbon emission limit. Of 321 major air polluters, only half had ever experienced enforcement action (Portney, p.144). The enforcement procedure is time consuming and a drain of legal sources of pollution control authority.

References: Richard B. Stewart. "Regulation, Administration and Administrative Law: A Conceptual Framework." California Law Review Vol.69, No.5. September, 1981. pp.1263-1377. Robert W. Crandall. Controlling Industrial Pollution. Washington, Brookings Institute, 1983. pp.99-106. Paul R. Portney. "Natural Resources and the Environment" ed. John Palmer, Isobel Sawhill. The Reagan Record, Washington, Ballinger Publishing Co., 1984.

Code:US-E-a-20

Country: US

Type of Regulation: Pollution (Health and Safety/Environment)

Name of Agency: Internal Revenue Service (IRS)

Program Title: Tax incentives

Initiation and Termination Dates: n/a

Relevant Legislation: Proposal

Purpose: To provide financial assistance for health and safety investments.

Procedure To Achieve Compliance: The emphasis is on tax exemptions to provide financing to private firms through tax-exempt bonds. The interest on such bonds is exempt from federal income taxes.

Responsibility: The Internal Revenue Service does not allow tax-free financing for investments that protect employees from toxic substance exposure in addtion to preventing environmental damage.

Enforcement: There is difficulty in administering this provision of the tax code and in limiting the provision to pollution control and not to productive investments. For instance, the limitation is to 'end of pipe' technologies with no productive value such as effluent water treatment.

Evaluation: The Department of Treasury Report (1981) was critical of using tax subsidies to achieve OSHA compliance. The program is difficult to administer because of the problem of distinguishing expenditures from normal business costs. There is incentive to adopt unnecessarily capital-intensive compliance methods. OTA concludes that financial assistance programs might spur the implementation of control and assist in compliance while reducing the controversy of regulatory proceedings. Other disadvantages of this program are: the burdens it places on tax revenues; the complication of tax law; and the difficulty entailed in assessing the percentage of costs that are directly tied to the improvement of health and safety.

Reference: OTA, Preventing Illness and Injury in the Workplace. Washington, 1985; Chapter 16, p.332-332.

Code: US-E-a-21

Country: US

Type of Regulation: Environmental

Name of Agency or Department: Securities and Exchange Commission (SEC)

Program Title: Disclosure Requirements for Publicly Held Registered Companies

Initiation and Termination Dates: 27 September, 1979

Relevant Legislation: Environmental Disclosure Administrative Enforcement Proceedings. SEC Release No. 16223 No. 33-6130; 34-16224 (not available)

Purpose: To estimate accurately the costs of compliance and of corporate statements.

Procedure to Achieve Compliance: Each registered company must disclose ,in a report filed with the SEC, both the cost of complying with Federal, State, and local pollution control requirements and whether or not there are pending judicial or administrative proceedings involving the company.

Responsibility: SEC

Enforcement: There is the power to impose far-reaching remedies on a company, as in the case of US Steel. These can include the funding of an outside consulting firm to make a complete analysis and estimate of the costs of compliance with the environmental requirements. As well, there are civil and criminal penalties for non-compliance and an appropriate follow-up mechanism.

Evaluation: Environmental audits were originally modelled on anti-trust inventories, a technique developed by anti-trust lawyers to assist in identifying problems under anti-trust law. In one instance (the case of US Steel) "far reaching remedies were imposed upon the company, including the hiring of an outside consulting firm to make a complete analysis and estimate the costs of compliance with environmental requirements (including civil and criminal penalties for non-compliance) and appropriate follow-up action at the corporate management and board of directors' levels."

Settlements have required full disclosure of the auditor's report of findings regarding non-compliance and access to the company records that the auditors examined. The agency's monitoring of the audit process itself varies with the seriousness of the compliance problems to be addressed by the audit provision, the compliance history and resources of the company.

In 1980, the Director of Enforcement for EPA's Water Division noted that his Division proposed to license environmental auditors and labs. The auditor was to design sampling and testing programs, and was to be responsible for checking the lab's quality control, certifying and submitting quarterly reports in each instance of a major source, and yearly reports for minor sources. Auditors would also be responsible for reporting non-compliance and fraud. Civil and criminal penalties would be provided for conflict of interest and for false reporting, and auditors would receive one-quarter to one-half of the penalties for attempted bribery. Auditors would not be permitted to audit the same location for two years in a row. There is no data available on the success or failures of this program.

References: "Structuring Corporate Compliance Programs for Pollution Control Requirements", Business Lawyer; Volume 35, April 1980, p. 1477, footnote 50. See also: Mosckovitz, J.C. and S.R. Hoyt, "Environmental Auditing, Developing a Preventive Medicine Approach to Environmental Compliance", in Loyola of Los Angeles Law Review, June 1986, 1133-68.

Code:US-E-a-22

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Ambient Standard Setting

Initiation and Termination Dates: 1970, Amendments 1977

Relevant Legislation: Clean Air Act, 1970, 1977 (42 USC *7401-7642)

Purpose: To develop universal ambient air quality standards.

Procedure To Achieve Compliance: Primary and secondary ambient standards are set for all criteria pollutants, a category that includes particulates, carbon monoxide, sulfur oxides, nitrogen dioxide, hydrocarbons, oxidants, and lead. The primary standard must protect the health of the most sensitive groups in the population with an adequate margin of safety. The secondary standards must protect the "public welfare" which includes private benefits such as crop yields and the prevention of property soiling. The 1977 amendments require that each of these standards be re-examined every five years. There is a grandfathering principle for existing products and procedures. Proposed rules are published in the Federal Register and there is a provision for a comment period and public hearing.

Responsibility: The EPA administrator is forced to make a judgement from experimental and clinical evidence about the health effects of pollutants. Linear evidence from higher concentration toward zero concentration may lead to the prediction of some health effects at even the lowest concentrations.

Enforcement: Through emission controls set through the EPA and the states. Through administrative and judicial procedures. There are no civil penalties for enforcing standards.

Evaluation: The ambient standard setting process is confusing and confused (Crandall, p.151). By the end of 1982, the EPA had revised only the oxidant standard. It has been unable to reach decisions on the revisions of standards for other criteria pollutants. Revision is based on the lowest achievable emission rate and the best available control technology and may not represent the current state of the art. The more important standards, from a health prospective, have not been revised. There is a general failure to meet deadlines for ambient standards. There is a recommendation to replace deadlines by updating reasonably available control technology requirements. Congress did not live up to its reponsibility to revise outmoded unattainable deadlines (Melnick).

The problem of obtaining enough information to set detailed standards is severe. The problems of enforecement are also severe, as is the judicial review process including the uncertainty of punishment for non-compliance.

Code: US-E-b-1

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Regulated Rule-making--Penalty Assessment

Initiation and Termination Dates: 1982

Relevant Legislation: Toxic Substances Control Act (TSCA) Par. 16(a) 15 USC Par. 2615(a) (1982)

Purpose: To avoid a lengthy assessment of judicial relief.

Procedure to Achieve Compliance: The EPA sets a matter for hearing, forcing alleged violators to decide quickly how to respond. The agency assesses civil penalties after the adjudicary hearing.

Responsibility: Statutes authorize both judicial and administrative assessments of penalties. Decisions are open to judicial review at the Court of Appeals.

Enforcement: Civil penalties are not to exceed $25,000 for each violation. In addition criminal penalties may be assessed at up to $25,000 with a maximum of 1 year in prison.

Evaluation: There is greater flexibility in administrative assessments. There is no burden on judicial resources, and this program results in a more effective, expeditious enforcement procedure. This program results in maximum use of bureaucratic resources, because agency decision makers with expertise in the field make the final decisions.

References: Loyola of Los Angeles Law Review, pp. 1336-37.

Code: US-E-b-2

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Administrative Order--Hazardous Waste/Binding Arbitration

Initiation and Termination Dates: 1980

Relevant Legislation: Comprehensive Environmental Response Compensation and Liability Act: Superfund 42 USC Par. 9608(b)(c) CERCLA Sec. 112(b)(2)-(3) Superfund Amendments and Reauthorization Act. Publ. L No. 99-499, Par. 122(h)(2)(1986) Sect. 107 CERCLA.

Purpose: Clean Sites is a non-profit organization that works on a contract basis with EPA with respect to enforcement. It employs about fifty professionals to handle approximately 2000 cases connected to the Superfund. It is designed to assist in resolving issues of joint liability, particularly when the number of parties is very large. The purpose is to develop a plan for mitigation and to distribute costs among the parties whose actions produced the harm. Settlement agreements (as these plans are called) must be approved by EPA, which assigns a project manager to oversee (audit) performance.

The purposes are: to resolve issues of joint liability in order to clean up most hazardous waste sites. To develop and implement mitigation plans and to avoid litigation by the private sector. To substitute administrative orders for consent decree injunctions or other judicial remedies.

Procedure to Achieve Compliance: The EPA may enter binding arbitration if claims do not exceed $500,000. The nature and amount of waste taken to dumpsites is assessed; a non-profit organization is contracted to handle Superfund cases of clean-ups and to work with involved parties on identifying clean-up remedies. The design of the remedy to be taken is proposed to the EPA. Mitigation costs are distributed among the parties involved. The plan for mitigation and the acceptance of proportional shares of cost is agreed upon and then approved by the EPA as an Administrative Order. The National Enforcement Investigations Center pursues criminal enforcement procedures if necessary.

Responsibility: The EPA uses arbitration for cases involving factual rather than legal issues. The Investigation Center refers cases for criminal proceedings to the Department of Justice. Corporate officers and employees are held responsible. In several States, environmental agencies have no administrative penalty authority and need to refer to the courts or to the EPA if sanctions are necessary.

Enforcement: Civil penalties amount to restitution or compensation. The fact that fines may involve large amounts of money provides a great deal of clout for negotiation. The completion of projects may take up to 4 years or more. Where there has been a delay in meeting terms, settlements have been obtained in 54% of cases; 27 of 39 agreements contained provisions for assessing penalties in cases of non-compliance. The EPA performs an auditing function; the private sector assumes responsibility for implementing mitigation plans or may pay in order for mitigation to be implemented by the public sector.

Evaluation: The issue of payment of the mediator is controversial. Costs for the mediation process are distributed. There has been no pattern established in terms of the cost-effectiveness of clean-ups. Additional problems are that generally managers must supervise too many projects, resulting in competing demands, and that there is no formal guidance under which they operate. The procedure is useful, however, in resolving routine cases which do not merit civil or judicial referral. Penalties assessed have been below the maximum allowed, but State officials believe they deter illegal disposals, given that the penalties have become tougher in recent years.

References: GAO/RCED-86-123 Hazardous Waste Clean Up: Guidance on Use of ADR, EPA, See also, Environmental Law Institute, Summary Report: Remedial Response at Hazardous Waste Sites (84-19040); Anderson, F.R. "Negotiation and Informal Agency Action", Duke Law Journal, April 1985 pp 261-380; US GAO, Hazardous Waste Responsible Part Clean Up Efforts Require Improved Oversight" May 1986.

Code: US-E-b-3

Country: US

Type of Regulation: Environmental--Arbitration

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Guidelines for Settling Enforcement Actions

Initiation and Termination Dates: 1980 (Guidelines 1985)

Relevant Legislation: Comprehensive Environmental Response, 50 FR 5034 (1985); Compensation and Liability Act (Superfund) 42 USC Par. 9608(b) Section 112(b) (4) Arbitration Provision

Purpose: To settle conflicts arising from claims asserted against CERCLA's using the Hazardous Substance Response Trust Fund.

Procedure to Achieve Compliance: The Superfund created a trust fund to pay for clean ups of hazardous waste spills and disposal sites. It may be used to pay the government's costs to clean up. Upon presentation of a claim, the EPA administrator must attempt to negotiate a settlement, and if unsuccessful, make an award from the fund or deny the claim.

The administrator must submit denied claims for arbitration. The President must establish a Board of Arbitrators to hear claims. CERCLA authorizes the arbitrator to conduct informal public hearings and to issue written decisions. The EPA issued a proposed rule to establish procedures for arbitration in 1985. The EPA administrator appoints the members of the Board of Arbitrators (50 Fed. Reg. 51196) to a term of 3 years. Fact finding roles are limited and reviews of the Adminstrator's decision are prohibited. The Administrator submits all denied claims to the American Arbitration Association (AAA) within 5 days; the claimant may initiate arbitration by submitting a claim within 30 days. The AAA provides a list of arbitrators to choose from. The arbitrator must hear the case within 60 days after appointment and the decision must be made within 90 days of the submission of the claim to the Board.

Responsibility: By selecting issues, the EPA can retain control over part of the dispute resolution process. Parties may perform portions of a clean up; pay into a fund to finance work; or reimburse the Superfund for work the EPA has done. Although the EPA is responsible, States may take responsibility for obtaining settlements at priority sites under the authority of State laws.

Enforcement: Settlements are binding and conclusive. The Act provides for a judicial review of the arbitrator's decision unless it finds that the decision constituted an "arbitrary or capricious abuse of the members' discretion" at US District Court. Cases are appropriate if an impasse in negotiation or litigation is reached; they require an inappropriate level of agency resources; contain a large number of people or issues; are complex, divisive or controversial; or where the award of the court may not have long-term environmentally desired results.

Evaluation: There is resistance on the part of EPA personnel to this policy as they fear they may appear to have failed by not resolving conflicts. There is also a fear of loss of control. The procedure can also be used as a means to delay compliance, as it may take 7 years for remedial investigations and feasibility studies. In addition, it may take 4 years to finally clean up. As of Dec. 31, 1985, the EPA reached 195 "party settlements".

Up to this point, a clear definition of 'clean' does not exist. There are problems in meeting and performing negotiated studies and activities. The GAO Study found problems in 64% of settlements reviewed: submissions were inadequate; time frames were extended; and there were problems with the EPA review. There was also a tendency to minimize problems. The EPA has no set time-frame for reviewing submissions, as such, there is significant variation. Project Managers need better guidance for oversight responsibility and workload priorities. In addition, the EPA asked the Justice Department to drop 49 pending enforcement actions to leave enforcement to the States in question (Mashaw, p.111).

References: Harter, "Points on a Continuum" in Sourcebook ADR 1987, p.309-349. Anderson "Negotiation and Informal Agency Actions: The Case of Superfund, 1985 Duke Law Journal No. 261 (1985). Robinson in Sourcebook ADR, pp.513-525. Survey, in Sourcebook ADR, p.595. Jerry L Mashaw, Suse Rose-Achermain "Federalism and Regulation" in The Reagan Regulatory Strategy, ed. George C. Eads, Washington: The Urban Institute, 1984, pp. 111-145.

Code: US-E-b-4

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: State Implementation Plans (SIPs)

Initiation and Termination Dates: June 23, 1982

Relevant Legislation: 47 FR 27073; Clean Air Act 42 USC Section 7410

Purpose: To meet national ambient air quality standards (NAAQS) in each state.

Procedure to Achieve Compliance: State Implementation Plans are comprehensive bundles of strategies and commands containing all requirements necessary to attain NAAQS in the state in question. SIPs are specific to one of the six pollutants for which the EPA has developed national standards. The SIP decision process requires both Federal and State approval. At each level, revisions must satisfy both the notice and comment rule-making procedures.

Federal approvals typically go through a 2 stage process from proposals to final rules. Because of backlogs there have been 3 procedural changes:

(1) minor proposed changes are now permitted to go directly to the final Federal review;

(2) to the extent that this is possible, both State and Federal reviews are to be conducted concurrently rather than consecutively; and,

(3) if no comments are received after proposed SIP revisions have been published in the Federal Register, the full responsibility for approval is assigned to the appropriate regional office and there is no review by EPA Headquarters.

Responsibility: Under Title 1 of the Clean Air Act, the Federal Government is charged with issuing 'National Ambient Air Quality Standards' for any widespread air pollution that may endanger public health or welfare. Under the Act, the States are required to submit implementation plans indicating how Federal standards will be met. The EPA has designated 247 NAAQ regions. SIPs must demonstrate compliance by 1982 or 1987 depending upon the pollutant in question. Each time an ambient standard is changed or a new set of source standards promulgated, the revisions must pass an adminstrative procedure gauntlet.

Enforcement: The EPA has little real power to insist that SIPs be reasonable, although it may disapprove of SIPs if they do not provide an adequate control. If a State is unable to propose an SIP, the EPA may enact its own plan. While the EPA cannot compel a State to enforce an SIP it can suspend Federal grants to the State for sewage treatment or transportation facilities. The EPA may also press for Civil Court proceedings against sources of pollution. In practice this is ineffective because the EPA lacks the manpower and budget to enforce standards in States which do not wish to have them enforced.

Evaluation: The process is unduly cumbersome and burdened with procedural requirements. There is an uncritical acceptance of the objective to clear the backlog. The potential benefits of emissions trading may be subverted if a series of unexamined, tainted trades are brought to public officials attention before the value of the regulatory strategy has been demonstrated. A related oversight is that the program is vulnerable to shifting political winds.

References: Fix, Michael; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy, ed, George C. Eads; Washington; Urban Institute, 1984. pp 153-179/ and, Crandall, Robert, W; Controlling Industrial Pollution, Washington; Brokings Institution, 1983. p.10.

Code: US-E-b-5

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Administrative Rule-making--Negotiation of Rules

Initiation and Termination Dates: n/a

Relevant Legislation: March 6, 1985. Notice of Proposed Rule--Final Rule Sept. 30, 1985. (NCP) Non-conformance Penalties Under Clean Air Act and on April 8, 1985, on exemptions under Sect. 18 of FIFRA Administrative Procedure Act. 5 USC 551-559 (1976)

Purpose: To improve the efficiency of rulemaking and enforcement.

Procedure to Achieve Compliance: In 1982, the Administrative Conference of the US (ACUS) recommended that representatives of major interests affected by a proposed regulation meet jointly with senior officials of the appropriate government agency in a structured attempt to reach agreement on proposed rules. If an agreement was reached, the agency would publish in the Federal Register as a notice of proposed rule, then it would go through the notice and comment procedure. Independent mediators are to convene negotiations and identify potential parties, key issues, concerns and arrange the announcement of negotiation in FR. The EPA publishes the proposed rule in FR and interested persons have the chance to submit written comments. This is known as a 'paper hearing' to create a record and formalizes rule-making before the final rule is published.

Responsibility: The EPA is authorized to set rules following a specified procedure of a public review process. Results are open to judicial review.

Enforcement: Through civil and criminal penalties and through litigation.

Evaluation: Generally formalized rule-making increased the time and resources required for decisions. This could also be a procedural weapon to be used to obstruct or delay agency actions or to hinder informal bargaining. There was generally success in implementing agreements: 80% of all site specific agreements were fully implemented; 41% of all policy cases; 7% of site specific cases were unimplemented; and 41% of policy cases.

References: Gail Bingham Resolving Environmental Disputes Washington, The Conservation Foundation, 1986. Richard B. Stewart "Regulation Innovation, and Administrative Law: A Conceptual Framework", California Law Review, Vol 69, No. 5, September, 1981, pp. 1263-1377 esp. 1274-75.

Code: US-E-b-6

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Public Participation

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Air Act 42 USC P.7401-7642 (1982) Sect. 304 Clean Air Act, 1977 42 USC P. 7604 Sect. 307(j) 42 USc 7607(d)

Purpose: To ensure compliance with air quality standards, to control emissions and to encourage the public to participate in enforcement.

Procedure to Achieve Compliance: The EPA sets air quality standards; Sect. 304 permits any person to bring suit to ensure enforcement of EPA standards; Sect. 307 permits citizens to challenge air quality standards. The procedure allows for participation in rule-making during the comment period and facilitates the presentation of submissions to hearings.

Responsibility: The EPA; the public is encouraged to participate by challenging quality standards in court, whether it be in District Court, Court of Appeal, or the Supreme Court.

Enforcement: Through the assessment of civil penalties and through litigation.

Evaluation: A problem with the court challenge concerns fee awards: there has been a Supreme Court decision to deny an award of fees. Challenges by the public are deterred as the Congressional intention is impossible to implement under the Supreme Court ruling; the process has become unaffordable. Participation in hearings is also a problem: there is little room for dialogue and what does take place is in the form of simply presenting prepared testimony. The suspicion is that hearings are pro forma compliance with public participation and that they actually have little bearing on the agency's deliberations.

References: Laura Lake "Characterizing Environmental Mediation" in Environmental Mediation: The Search for Consensus; Boulder, Co; Westview Press, 1980 pp.58-74. Amy Semmel, "Ruckelshaus v. Sierra Club: A Misinterpretation of the Clean Air Act's Attorneys' Fee Provision" in Ecology Law Quarterly, 1985, p.399.

Code: US-E-b-7

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Guidance on Alternative Dispute Resolution (ADR) in Enforcement Cases--Mini-Trial

Initiation and Termination Dates: 1986

Relevant Legislation: Draft Guidelines ADR in EPA Enforcement Cases (See Sourcebook, 1987, p.792-800 and Memorandum, 1987 Scourcebook, p. 809-811)

Purpose: To achieve settlement and compensation; to achieve conflict solution through quick, cost-efficient means.

Procedure to Achieve Compliance: Parties agree to hold a mini-trial which is a structured negotiation process. A neutral advisor is chosen from a list of candidates (fees are borne equally by both sides). Source material is sent to the advisor within 10 days, the parties present their case to principals who have the authority to settle the dispute. There is provision for a maximum of 25 interjections and 5 depositions. Fact finders are employed to break log jams. The presentations at the mini-trial are informal and the advisor may act as a moderator, though not as a judge or arbitrator. At the conclusion of the mini-trial, management representatives meet to agree to a solution.

Responsibility: Principals for both parties have the authority to settle the case. There is no opportunity for public input.

Enforcement: Decisions are non-binding if they are not made voluntarily. The process is expedited and non-judicial. If both parties agree the Administrative Law Judge or the Federal District Judge may be informed in confidential communication that ADR is employed to suspend court proceedings.

Evaluation: The process is particularly useful when poor communication exists among parties, where there are inflexible negotiation patterns, a history of intransigence, very high compliance cost penalties or when the issue involves sensitive matters where a court may be unable to settle a dispute. There is, however, a lack of public scrutiny.

References: Administrative Conference of the US, Sourcebook: Federal Agency Use of ADR, pp.792-800. Memorandum, 809-811. Draft Guidance: Memorandum.

Code: US-E-b-8

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Compensation--Arbitration (ADR)

Initiation and Termination Dates: 1978

Relevant Legislation: Federal Insecticide. Fungicide and Rodenticide Act (FIFRA) 7 USC P. 136a (c)(1)(d)(i)and(ii)

Purpose: To settle disputes over the amount of compensation paid to the provider of data of previous applications by second applicant.

Procedure to Achieve Compliance: The amendment of 1978 establishes the mandatory use of binding arbitration to establish compensation due to one applicant's use of previously submitted data in an application for registration of a pesticide. The arbitrator is chosen by the parties; there is no provision of guidance as to norms to be chosen. Decisions are made through the findings of fact and conclusions of law. They must also contain a determination concerning any compensation due. There is no provision for an agency review. Arbitrators are empowered to adjudicate disputes over amount of compensation. Decisions are final and conclusive, and are reviewable only in cases of fraud. Once the arbitrator is chosen the claimant (person seeking compensation) has 60 days to file statements, the other party then has 60 days to respond. The claimant has the burden of presenting evidence to support his claim.

Responsibility: The EPA decides what process is to be taken, but is not part of the process itself. Decisions rendered are not agency orders; ie. information can remain confidential. The arbitrator is chosen from the American Arbitration Association's roster. Neutrality is a central qualification. The arbitrator is empowered to set compensation if parties cannot agree.

Enforcement: Agreements are binding and court reviews are limited. It is the arbitrator, not the EPA who determines compensation. Judicial review is only available in cases of fraud or misrepresentation.

Evaluation: Arbitration has been challenged because the use of arbitration denies parties their right to have issues resolved in court. The absence of standards is inadvisable. The arbitration provision has sparked a host of constitutional challenges.

References: Harter, "Points On a Continuum" in Sourcebook 1987, pp.309-349. Robinson, in Sourcebook, pp.513-525.

Code: US-E-b-9

Country: US

Type of Regulation: Environmental

Name of Agency: State Departments

Program Title: Negotiation of Environmental Disputes: Statutorial Procedures.

Initiation and Termination Dates: 1983

Relevant Legislation: State laws in Mass.; Rhode Island; Texas; Virginia; Wisconsin

Purpose: To examine institutionality of negotiation in environmental disputes.

Procedure to Achieve Compliance: Statutes require applicants for solid or hazardous waste facility permits to negotiate a siting agreement with the host community or communities in addition to obtaining state regulatory permits. The Procedures for working out agreements differ somewhat concerning who or what triggers the negotiation process, the selection of the host community, the issues that can be negotiated, the ratification of agreements, and the rules of arbitration if parties fail to reach agreement. Under all 5 statutes the officials of the host community appoint a committee to negotiate with the permit applicant. The scope of issues to be negotiated is broad in all cases.

Responsibility: Virginia--negotiation and mediation are voluntary. Wisconsin--negotiation is optional, however, strong incentives for agreeing to negotiate are written into the statute. If the choice is not to negotiate, all local permitting authority is preempted. The developer is required to negotiate if the community chooses to do so. Mass./Rhodes Is.--Both the developer and the community are required to negotiate. The issue goes to some form of binding arbitration if the parties are unable to reach agreement. Virginia--elected officials from both the city and the county negotiate directly, there is no provision for participation by separate interests.

Enforcement: In 3 States (Mass., Rhodes Is., and Wisc.) if there is no agreement, the issue goes to binding arbitration.

Evaluation: The advantage of the Statutorial process is that procedures are defined, which makes the resolution process more predictable and the mechanisms for enforcement are clearer. In Wisconsin, 50 solid waste site cases had begun to go through the process by mid 1985. Of these 8 were settled; 4 applications were withdrawn as the community waived negotiation; 37 were in negotiation and 1 was in mediation. In Rhode Island there was 1 agreement. In other States, by mid 1985, no applications had yet been initiated. One of the principle strengths of this program is flexibility. It is generally difficult in law to specify who the parties at the negotiation table should be and what issues are negotiable. It is unclear what effect this program has on the idea of negotiating in good faith.

References: Gail Bingham; Resolving Environmental Disputes, Washington, Conservation Foundation, 1986. P.514. Mass. Gen. Laws Ann. Ch. 21D (Lawyer Coop. Supp. 1984) Rhodes Is. Gen. Laws Sections 23-19.7-1 to 23-19.7-15 (1983) Texas. Comprehensive Hazardous Waste Management Act, House Bill 2358, June 1985. Virginia. Hazardous Waste Facilites Siting Act. Chapter 17.1 Sect. 10-186-1-10-186.21. Wisc. State Ann. Section 144.445 (West Supp. 1983-84).

Code: US-E-b-10

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Environmental Auditing in Enforcement Settlements

Initiation and Termination Dates: July 9, 1986

Relevant Legislation: Draft EPA Policy--Environmental Auditing (See EPA Memorandum)

Purpose: To use environmental auditing to achieve and maintain compliance.

Procedure to Achieve Compliance: The EPA may propose environmental auditing provisions in consent decrees and other settlement negotiations. Judicial and administrative enforcement cases are settled only where violators can assure that non-compliance will be corrected. Compliance audit--an independent assessment of a party's current state of compliance and assurance that measures to be taken to remedy uncovered problems are assessed. Management audit--an audit or compliance policy, practice or control, depending on the individual case. The necessary elements include: top management support; that the audit team is independent from persons or activities which are being audited; and that there are explicit audit program objectives, resources and frequency procedures.

Responsibility: The EPA has the statutory authority to request collection and analysis of compliance related information. State and local regulatory authorities are encouraged to consider applying policies. The Agency has oversight of the audit process.

Enforcement: In the case of a party's unwillingness to audit voluntarily, the EPA can seek a Court or administrative order. Some settlements entail full disclosure of the auditor's report of findings and access to company records. There are stipulated penalties for audited and discovered violations. There are no reductions below amounts otherwise dictated by applicable penalty policies or lower than economic benefits of non-compliance.

Evaluation: The program is successful in accomplishing compliance. The program enables the EPA to address compliance at the entire facility or in all facilities of a corporation and helps identify violations that may have gone undetected. The program helps to produce corporate policies and procedures.

Where Judicial settlements are concerned, negotiators consult with the Justice Department to ensure consistency. Several agreements resulted in mitigated civil penalties to reflect the party's agreement to the audit.

Code: US-E-b-11

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Alternative Dispute Resolution (ADR)-Draft Guidance--Mediation

Initiation and Termination Dates: 1979/1986

Relevant Legislation: 40 CFR P.123; 44 Fed. Reg. 46774 (1979) 5 USC P.553(b) 1982; 1986 Guidance Procedures

Purpose: To solve environmental disputes quickly and enduringly.

Procedure to Achieve Compliance: The Appeals Board, in consultation with the involved parties, may require mediation to resolve a dispute already subject to administrative adjudication or prior to it. A neutral third party is selected. The imposed rules and procedures are used as methods to control discretion in regard to specific findings, reasoned justification and consistency. The mediator may propose a solution. The EPA decision points are established at headquarters, in the regions and with the Department of Justice.

Responsibility: The EPA remains neutral in the process and has no power to make decisions on issues, it functions to assist parties to reach settlement; the parties themselves have the power to resolve issues. Supervising courts police the settlement negotiations. Parties and the public may contest or appeal all judicial decrees and agency actions or challenge settlements. Parties have the freedom to withdraw from mediation.

Enforcement: Results are not binding unless parties agree otherwise in writing. By 1982 the process had not yet been used. EPA officials fear that the use of a neutral mediator would indicate a failure to resolve issues on one's own and that there would be a loss of control. The procedure may be used to draw out negotiations and to delay compliance. There is also a problem of confidentiality.

Evaluation: The mediator can help to see beyond differences to a mutually beneficial outcome and to reconciliation. With proper safeguards there may be settlements of administrative litigation; the process is a useful technique for compliance. The danger is that the regulatory process may be by-passed and the public not represented. Certain rights may be restricted by forcing mediation. There is also an increase in discretion, arbitrariness, possible abuses of power and problems of inadequate representation. The procedure is useful when an impasse is reached which would require excessive expenditures. Court order remedies may be ineffective. Case Study: Hudson River---The private parties by-passed Federal and State agencies, reached agreement and then presented it to the regulators. The alternative to this was continued litigation (already in its 17th year) with no end in sight. The standard set by the private group, without a democratic check, resulted in weaker standards which were inconsistent with law. It is questionable if the public interest has been served given that the agreement does not match standards.

References: Robinson, in Sourcebook, 1987. pp.513-525. Bob Rosin "EPA Settlements of Administrative Litigation" Ecology Law Quarterly No.12, pp.363-398. (Ellen's material) David Schoenbrod "Limits and Dangers of Environmental Mediation: A Review Essay" New York University Law Review 1983. pp. 1453-1476.

Code: US-E-b-12

Country: US

Type of Regulation: Public Health

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Advisory Committees: Pollution Control

Initiation and Termination Dates:

Relevant Legislation: Clean Water Act

Purpose: To improve the efficiency of pollution control procedures.

Procedure to Achieve Compliance: Pollution permits are screened to specify permit conditions for individual plants. If broad policy guidelines are already in place, technical issues play a major role in those determinations. The issues are those such as: the engineering feasibility of a particular control technology at a given site and the ecological effects of waiving otherwise applicable control requirements. The EPA has experimented with the practice of advisory committees making decisions in order to reduce the necessity for adversary hearings, and to enhance the quality of technical decisions.

Responsibility: At the discretion of the EPA through the use of Advisory Committees. The law is unclear upon whether the determinations of the advisory committees are subject to adversary re-examination, including cross-examination of committee members, should an interested party insist upon it. The Federal Advisory Committee Act requires Office of Management and Budget (OMB) clearance before a new committee may be established. The process is time consuming and approval is often grudging.

Enforcement: n/a

Evaluation: The process is used in the context of promulgation of general standards. If adequate numbers of non-partisan experts can be found, the technical advisory committtee can make a substantial contribution. Court decisions reviewing the EPA's waver of thermal effluent guidelines at nuclear plants indicate that in cases of adjudication, subject to the trial-type hearing provisions of the Administrative Procedures Act (5 USC, 554) advisory committee determinations must, at minimum, be made available to the parties and are subject to rebuttal evidence and argument. Cross-examination may be required as well.

References: Richard B. Stewart. "Regulation, Innovation and Administrative Law: A Conceptual Framework". California Law Review Vol. 69, No. 5. September 1981, pp.1263-1377.

Code:US-E-b-13

Country: US

Type of Regulation: Environment

Name of Agency or Department: Department of Energy (DOE), Environmental Protection Agency (EPA), New England Power Company (NEPCO)

Program Title: Mediation Ageement

Initiation and Termination Dates: 1977

Relevant Legislation: Energy Supply and Environmental Coordination Act (1974) and Clean Air Act (no particular reference) (case example)

Purpose: To convert an electricity plant from oil to coal burning within permitted pollution limits.

Procedure to Achieve Compliance: The DOE required NEPCO to convert to coal. The EPA estimated the costs and the steps required to meet air pollution standards. NEPCO contested this estimation. The DOE continued to operate with a formal procedure which included issuing a prohibition order, preparation of EIS (Environmental Impact Statement), and in cooperation with the EPA it sought certification under the State Implementation Plan as stipulated by the Clean Air Act. Mediation was initiated through a non-profit organization. An agreement was achieved 11 months later in reference to the phased in conversion plan, limits on surplus content of coal and upon standards for the facility. The mediator functioned as an organizer, as an information resource and a confidential advisor.

Responsibility: DOE, EPA, NEPCO.

Enforcement: no information available

Evaluation: This was a voluntary undertaking which resulted in agreement on a phased-in conversion plan. The affected parties were satisfied with the agreement and with the limits that had been established. They were conscious that the affected public was not represented and there was no attempt made to publicize the results.

References: US Administrative Conference, Sourcebook ADR, pp.189-213; reprint: Susskind, Lawrence and Connie Ozawa: "Mediated Negotiation in the Public Sector"; American Behavioral Scientist, Volume 27, No. 2, pp. 255-279, 1983.

Code:US-E-b-14

Country: US

Type of Regulation: Public Health

Name of Agency: EPA

Program Title: Pesticide Regulation: Rebuttable Presumption Against Registration Procedure (RPAR)

Initiation and Termination Dates: 1972

Relevant Legislation: Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
Purpose: To protect the public from products that are not safe.

Procedure to Achieve Compliance: Through the establishment of a formalized procedure for reviewing the registration of a pesticide. The RPAR process begins when a pesticide is placed on a review agenda. There are 90 days to assemble the information on risks and benefits. If there is a good cause to deny or to limit registration, notice of RPAR is published in the Federal Register (FR). Applicants, government agencies, and the general public have 45 days to submit evidence and briefs in rebuttal of presumption. Six months after the original publication, the EPA is required to issue a document responsive to comments, either in support, or in terms of presentation of reasons for refusal to accept. The packet is forwarded to an administrator for a decision. The formal proposal to regulate is published in FR, and includes justifications and supporting documents. There are 30 days for comment and an additional 30 days for consideration of comments before a final decision is reached and published. The process requires more than one year if all deadlines are met, which is not usually the case. The OPP review takes advantage of the fact that all pesticides are based on 1800 or fewer active ingredients and, as such, undertakes a generic review.

Responsibility: The EPA does not have to undertake risk assessments, but is expected to be familiar with scientific evidence. There is an option for a judicial review.

Enforcement: Through the issuing of permits and through assessed penalties.

Evaluation: The number of years and of dollars required to process a single pesticide is considerable. The public is not generally protected through this process. There are methodological and technical difficulties in the evaluation of risks and benefits.

References: Myrick Freeman. "Risk Evaluation in Environmental Control" in Reform of Environmental Regulation. ed. Wesley A. Magat. Cambridge: Ballinger Publishing Company, 1982. pp.47-69.

Code: US-E-b-15

Country: US

Type of Regulation: Mediation

Name of Agency or Department: Corps of Engineers, EPA, Denver Water Board

Program Title: Water Resource Allocation Mediation

Initiation and Termination Dates: data not available

Relevant Legislation: no particular reference (case example)

Purpose: To achieve settlement for dispute involving water treatment facilities, dams and reservoirs. To settle any conflict which arises.

Procedure to Acheive Compliance: Joint meetings are led by a neutral mediator in order to achieve settlement agreements that include sufficient compensation and steps to mitigate adverse impacts.

Responsibility: The responsibility is shared among the Corps of Engineers, EPA and the Denver Water Board.

Enforcement: A permit is issued as a result of a negotiated agreement which includes compensation and mitigation procedures and which is ratified through the regulatory process.

Evaluation: The agreements create a public consensus which is difficult to ignore. The role of environmental groups is weak as these groups are brought into the process too late. In the case cited, the negotiated reduced water capacity resulted in later shortages. Statutory powers are not affected because necessary permits and licences still need to be issued under conditions prescribed by law.

References: Kennedy, W.Y.D. and H. Lansford: The Metropolitan Water Round Table: Resource Allocation Through Conflict Management. Environmental Impact Assessment Review 4:l. Susskind: Public Sector Mediation reprint in US ADR Sourcebook, (1987) pp. 191-193.

Code:US-E-b-16

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Hazardous Waste Disposal--Encouragement of Information

Initiation and Termination Dates: n/a

Relevant Legislation: Resource Conservation and Recovery Act 1976, Section 3013 RCRA

Purpose: To reduce illegal waste disposals through an incentive program for employees/informants to report violations. To use awareness programs to detect and deter waste disposal; to implement special taxation and to revoke licenses where necessary.

Procedure To Achieve Compliance: Through inspections and the use of informers. An incentive program exists to motivate informers to indentify violations and to aid in achieving successful prosecutions. There also exists a manifold system whereby a copy of the manifold where the waste has been received is returned to the generator. There is also an institutional awareness program. In Los Angeles a permit fee is used as a special tax on hazardous waste while in New Jersey a conviction may result in a revocation of license to the transporters of hazardous waste.

Responsibility: EPA

Enforcement: Where environmental agencies have the authority to issue administrative penalties, the process of enforcement is expedited. Where environmental agencies do not have this authority, but must refer cases to the Attorney General in order for a civil suit to be brought, the process of enforcement may take 2 or 3 years (Mashaw, p.114).

Evaluation: The program is one which emphasizes deterrence rather than the provision of remedies. The county appears to be more successful in detecting hazardous waste than are the regional state offices. There is a need to emphasize prevention followed by enforcement and clean-up. Forgeries of manifolds are a problem. Federal funding for clean-up is required. While the incentive program for informers to report violations is effective, routine inspections are not. Where a license is revoked, there is a problem of the violator again entering business under another name. There is a need for more public awareness and involvement.

References: Loyola of Los Angeles Law Review Vol. 19, June 1986, pp.1338-1339. Jerry L. Mashaw; Susan Rose-Ackerman. "Federalism and Regualtion" in The Reagan Regulatory Strategy, ed. George C. Eads; Michael Fox. Washington Urban Institute, 1984, pp.111-145.

Code:US-E-b-17

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Environmental Mediation

Initiation and Termination Dates: February 1983

Relevant Legislation: 48 FR 7, 495 February 1983

Purpose: To resolve environmental conflicts. The goal is to develop a notice of proposed rule-making that reflects a consensus among the negotiators.

Procedure To Achieve Compliance: A notice is published in the Federal Register which indicates the development of a rule through negotiation. Outside contractor/negotiators experienced in the use of third party intervention techniques are used to assist in identifying the appropriate parties and to conduct negotiations.

Responsibility: While the EPA retains ultimate authority to take action, mediators are used to undertake negotiations to develop proposed rules. Negotiation does not imply mandatory consensus.

Enforcement: Binding standards are negotiated and published in the Federal Register.

Evaluation: Fiss (1984) suggests mediation is a highly problematic technique for streamlining dockets. Consent might be coerced or bargains may be struck by someone without authority. In addition to this, the absence of a trial and judgement renders subsequent judicial involvement troublesome. Agreements are likely to reflect imbalances of power; Fiss argues for justice rather than for peace. Mediation tends to trivialize the remedial dimensions of lawsuits and the continuous involvement of the court in implementing decisions. Agreements lack vigorous enforcement power.

Stewart (p.1341) sees an advantage in reduced decisional costs, less uncertainty and delay, and fewer unnecessary or unjustified technical constraints and compliance burdens. Yet consensus standards run the risk of dilution to the lowest denominator acceptable to all forms. Mediation is most effective where an industry has substantial economic incentives to adopt and adhere to voluntary standards, such as product standards or fire codes. These incentives are largely absent in environmental regulation. There is also the risk of using negotiated rule-making to to delay decisions and to wear down parties.

Negotiation is useful when the major actors believe that their interests are best met through cooperation. To be successful, opportunities for delay must be reduced. The EPA must be willing to give up some control over the rulemaking process and to invite an active role by outside parties in the early stage of policy formation. Advocate groups need to be compensated for the relaxation of procedural and to be equiped to participate effectively. Formal external checks on agency discretion are necessary which incorporate the process of a court review. Congress needs to validate informal negotiated standard-setting processes (Steward, P.1353) authorized by the EPA to fund participants with limited resources.

References: Richard B. Stewart. "Regulation, Innovation and Administrative Law: A Conceptual Framework." California Law Review Vol. 69, No. 5. September 1981, pp.1256-1377. Fiss. Against Settlement. Yale Law Journal, Vol. 93, 1984.

Code:US-E-b-18

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Environmental Mediation

Initiation and Termination Dates: n/a

Relevant Legislation: n/a

Purpose: To solve environmental disputes through mediation.

Procedure To Achieve Compliance: To initiate mediation of conflicts that otherwise will likely only be settled through lengthy court procedures. This would be mainly in the areas of standard setting or through the specification of public policy priorities.

Responsibility: The use of an environmental mediator from outside the EPA triggers the problem of accountability. There are no statutes, comparable to labor mediation, to apply to environmental mediation.

Enforcement: n/a

Evaluation: Most mediation efforts occurred in the context of major conflicts where the public interest appeared to be in serious jeopardy if a stalemate persisted. They have been undertaken in an ad hoc fashion. Because of the lack of codes for environmental mediation, there is no moral, legal, or economic pressure that ensures accountability.

There is also a problem when taking into account the interest of those not represented. To be successful, all parties that have a stake in the conflict must be identified and the relevant interest groups must be appropriately represented. Different values and assumptions must be confronted and a sufficient number of options must be developed, boundaries and time horizons must be agreed upon and the weighting, scaling and amalgamation of judgements about costs and benefits must be undertaken jointly. Fair compensation must be negotiated, the legality and financial feasibility of bargains must be ensured and all parties held to their commitments (Susskind, p.14).

It is important to show concern for the impacts on under-represented groups, the joint net gains, the long-term or spill-over effects and the precedents being set. A review of cases indicates that mediators did not appear overly concerned about the effects on groups not directly involved. They were not content merely to facilitate and encourage discussion but became activists for agreement.

It is proposed that mediation proceed under the auspices of an accrediting organization, such as the American Arbitration Association, which has binding ethical codes, and may ensure accountability. As well, that formal links to regulatory agencies and courts should be established in order to define and monitor the responsibilities of the mediators.

References: Lawrence Susskind. "Environmental Mediation and the Accountability Problem. Vermont Law Review. Vol. 6, No. 1, Spring 1981. pp.1-47.

Code: US-E-c-1

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Progam Title: Compliance Program/Administrative and Criminal Non-Compliance Penalties.

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Water Act Par. 309. 33 USC Par. 1319

Purpose: To enforce water quality standards through compliance programs.

Procedure to Achieve Compliance: A Company establishes a corporate compliance program through conducting a review of all environmental obligations, or, an environmental audit. There is a requirement to report violations; section 311(b) requires that spills and pollutions be reported.

Responsibility: The company and corporate officers are held responsible. The EPA issues compliance orders and judicial reviews at the Court of Appeal are possible.

Enforcement: Civil penalties range up to a maximum of $10,000. Also, through compliance orders. Civil actions include temporary injunctions. Criminal penalties are assessed at not less than $2,500 and not more than $25,000 per day of violation, imprisonment may be for a maximum of 1 year. At a second or subsequent conviction, there is a maximum fine of $50,000 per day of violation.

Evaluation: The zero discharge goal of the Clean Water Act is unrealistic and needs to be revised. There is a need for a statutory update.

References: "Structuring Corporate Pollution Compliance" in Business Lawyer Vol. 35, April, 1980. (ref. to internal auditing only) The Reagan Regulatory Strategy , Washington, Urban Institute Press 1984. (Article by Murray Weidenbaum).

Code: US-E-c-2

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Lead Phase Down Program

Initiation and Termination Dates: n/a

Relevant Legislation: Clean Air Act (no particular reference)

Purpose: To contribute to the improvement of environmental quality by reducing monetary penalties and to reduce prosecution through Federal District Courts.

Procedure to Achieve Compliance: Through inspections and publication of penalties. People are notified of violations and of the penalty scheme. There is a reduction of monetary penalties by up to 40% if the violator does something good for the environment. There is a two for one credit of at least 20% of the assessed penalty to improvement; for example, the EPA invest $2. for each $1., for at least 20% of the penalty.

Responsibility: The EPA is forced to prosecute cases in Federal District Courts; there is no authority to use administrative law judges. The program is not aimed at 'bad apples', but at those who feel put upon when they get caught. Each company does its own testing, and puts into place a quality control program.

Enforcement: Through escalating civil fines.

Evaluation: Ninety-six percent of cases settle under penalty reduction proposals. Educating companies to comply to the law is not effective to prevent fuel switching. The proposal is to make violations by the petroleum corporations public, which will affect consumer confidence. Regulatory clout is increased by grouping violations, increasing the magnitude of the penalty and by threatening to make violations public.

Code: US-E-c-3

Country: US

Type of Regulation: Environment

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Fuel Switching--Mobile Source Program

Initiation and Termination Dates: 1980/1981--Treating as traffic ticket as of August 10, 1987

Relevant Legislation: Clean Air Act, Title II

Purpose: To speed the collection of fines and to enforce and regulate the practice of nozzle switching (where an inspector finds an unleaded nozzle on a leaded pump--making fuel switching easier).

Procedure to Achieve Compliance: Through the inspection of pollution control devices and of fuel pumps. Historically there has been difficulty in collecting fines. The process has been speeded up with the introduction of a short form letter, prepared by an attorney, outlining the violation and fine and the possibility of fine reduction if the violation is stopped and a small fine paid immediately. The process between inspection and fine takes approximately a month. The average assessed fine is $200.

Responsibility: The short form is prepared by the Attorney General and the EPA carries out inspections.

Enforcement: The law permits fines up to $10,000.

Evaluation: The program is efficient in improving penalties restitution. The process can be simplified, speeded up and collection time reduced. The work load is also reduced with the introduction of the process whereby the offense is dealt with by issuing a traffic ticket.

References: EPA, "Lead Phase-Down Program".

Country: US **Code: US-E-c-4**

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Enforcement Pesticide Violations--Penalties

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 USC P.136L(b)(1)-(2) (1982) 136L(a)(1)-(3)(1982)

Purpose: To decrease residue violations with reference to food.

Procedure to Achieve Compliance: Primarily, there is a necessity for registration through a warning notice being issued by the EPA Administrature; the notice may contain an imposition of civil penalties. The Statute sets forth a series of factors to be considered in determining the size of penalties. No penalty will be assessed until the violator has been given notice and the opportunity for a hearing.

Responsibility: The EPA Administrator considers the appropriatenenss of penalties assessed with reference to the size of the business in question, the ability of the person to continue business, and the gravity of the violation. The firm has the burden of demonstrating acceptable social performance before operation or marketing. In 1978 FIFRA was amended to require registration although by 1981; this amendment was not yet fully implemented.

Enforcement: Civil penalties may be levied to a maximum of $5,000 for each commercial offence, or $1,000 for each private offence. Criminal offences are punishable by imprisonment of up to 1 year and fines of up to $25,000 for commercial applicators or imprisonment of up to 30 days and fines of $1,000 for private applicators, almost all of whom are farm users.

Evaluation: Most civil penalty proceedings have involved instances of adulteration, misbranding, or non-registration. This is a valuable enforcement tool as it creates greater awareness through stricter enforcement of the existing law.

References: James Dingell, "One Goal-Many Agencies: An Assessment of Pesticide Residue Regulation in Animal Foods and Animal Meat Products" Food, Drug, Cosmetic Law Journal No. 41, pp.467-511, 1982.

Code: US-E-c-5

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Promoting Innovation in Existing Regulatory Statutes--Subsidies and Guarantees.

Initiation and Termination Dates: 1977

Relevant Legislation: Clean Water Act. 33 USC •1282(a)(3)

Purpose: To promote the development and diffusion of new technologies to improve clean air and water control technology.

Procedure to Achieve Compliance: The Clean Water Act amendments authorized substantial Federal subsidies for the construction of secondary treatment facilities for municipal waste. These are used for end-of-pipe control projects. The amendments seek to assure municipalities that alternative technologies will not carry with them the financial risk of failure. Full federal funding is guaranteed for modifications if an alternative system does not function up to standards. The amendments contain three other provisions aimed at encouraging innovation in the construction grants programs:

(1) rural states are required to spend 4% of their Federal funds for alternative or innovative systems (33 USC 1285(h);

(2) Federal support for innovative projects undertaken in any State is now 85% rather than 75% (33 USC 1282(a)(2);

(3) construction grants made after September 1978 will be conditioned upon the local agency's taking a hard look at alternatives. This is similar to EIS and requires applicants to examine alternatives, including innovative technology, before obtaining Federal funding (33 USC 1281(g)(5).

Responsibility: EPA grants.

Enforcement: Provision of subsidies.

Evaluation: By 1981, these provisions had not stimulated much development of fundamentally new approaches, although they promoted consideration of existing alternatives to conventional sewer/outfall treatment technologies. Most of the projects are over-capitalized, under-maintained, often ineffective, and sometimes environmentally damaging. Promising new or unconventional technologies for secondary waste water treatment, such as recycling or spray disposal, have been largely ignored, partially because administrators responsible for funds are adverse to taking risks and because construction contractors and engineers are often conservative (Stewart: 1308). There is also a Federal administrative bias for uniform solutions.

References: Richard B. Stewart. "Regulation, Administration and Administrative Law: A Conceptual Framework." California Law Review Vol.69, No.5. September, 1981, pp.1263-1377.

Code: US-E-c-6

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Civil and Delayed Non-Compliance Strategies

Initiation and Termination Dates: 1970; Amendments, 1977

Relevant Legislation: Clean Air Act, 1977. Section 113, 120; 42 USC 7413, 7420.

Purpose: To maintain or achieve national ambient air quality standards.

Procedure to Achieve Compliance: Through the issue of permits.

Responsiblity: The EPA has authority for administrative assessment of penalties for non-compliant stationary sources which are self-implementing and independent of assessment of the harm generated by violation. They relate to costs that would have occurred had the source worked to comply in time, ie. they determine benefits achieved through the delay of compliance. Section 113 provides for civil penalties through the Courts to assess penalties for violations of the Clean Air Act. Section 120 authorizes administrative assessment of stationary source non-compliance penalties.

Enforcement: (A) Civil Penalties: Section 113 provides for civil penalties of up to $25,000 per day. The EPA announced a penalty policy from 1979 to sum the benefits from non-compliance and the cost to the public of the environmental degradation that resulted from non-compliance and added penalties for willful violation.

(B) Delayed Administrative Non-Compliance Penalty: for each non-compliance facility, the firm must follow 56 equation system procedures to obtain the precise value of the penalty.

Evaluation: (A) Civil Penalties. These penalties are arbitrary and infrequently used. Civil penalties equaled less than 0.1% of the estimated compliance costs for privately owned stationary sources in 1978.

(B) Adminstrative Penalties. Congress made a conscious choice to allow administrative rather than judicial assessments of non-compliance benefits. This allows flexibility as there is no extra burden on judicial sources and allows for more effective and expeditious enforcement. The court is, however, better able to deal with major cases.

The EPA study indicates that staff considered assessments to be subjective. The framework under which they are developed is cumbersome and invites legal challenges as well. The EPA argues that it has exercised considerable discretion in granting exemptions for firms that have entered into consent agreements for delayed compliance. Financial difficulties are used to delay compliance dates and compliance penalties. For instance, the steel industry could escape most penalty fees although only 13% of facilities were in compliance with emission standards in 1980 (Crandall, p.103). If the delayed penalty system is to work it has to be changed in order to reduce computational complexity. Civil penalties are no incentive if they are less than compliance costs.

References: Loyola of Los Angeles Law Review Vol. 19, June 1986. pp.1336-1340.
Robert W. Crandall. Controlling Industrial Pollution. Washington, Brookings Institute, 1983. pp.99-106.

Code:US-E-c-7

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Promoting Innovation in Existing Regulatory Statutes--Waivers and Variances

Initiation and Termination Dates: 1977

Relevant Legislation: Clean Air Act; 42 USC *7411(j)(l)(A); Clean Water Act

Purpose: To promote the development and diffusion of new technologies to improve clean air and water control technology.

Procedure to Achieve Compliance: Waiver procedures are for innovative technologies to allow firms with promising social innovations sufficient flexibility to carry them out. Seven year waivers from otherwise applicable new source performance standards are available, under Section 111 of the Clean Air Act, to new and modified sources of pollution that propose to use innovative abatement systems. The administrator of the EPA must determine that the proposed control system (1) has not been adequately demonstrated; (2) has a substantial likelihood of achieving greater performance than existing technologies in terms of emissions, energy, or economics; and (3) shows substantial potential for industry wide applications. Provisions in the 1977 CAA amendments authorize 4-year waivers of the nitrogen oxides standard for automobile manufacturers proposing to incorporate innovative emissions control (42 USC Section 7421(b)(6).

Responsibility: The EPA issues waivers and assesses civil penalties.

Enforcement: Through the denial of waivers and through non-compliance civil penalties.

Evaluation: There is a fear that waivers may be exploited as a method to delay compliance. Motor emission waivers cast doubt on the seriousness of Congress' committment to encourage basic progress and change. By 1981 only a handful of applications for waivers had been filed and none had been granted. The substantive limitations on relief and the delays involved in obtaining clearance are an obvious deterrent. This reluctance to grant waivers in advance for innovative technologies contrasts sharply with the great willingness of the Congress and the EPA to relax regulatory requirements after compliance efforts have fallen short because of technological and cost barriers.

References: Richard B. Stewart. "Regulation, Administration and Administrative Law: A Conceptual Framework." California Law Review Vol.69, No.5. September, 1981. pp.1263-1377.

Code: US-O-a-1

Country: US

Type of Regulation: Health

Name of Agency: Food and Drug Administration

Program Title: Food Additive Screening

Initiation and Termination Dates: 1958

Relevant Legislation: Food, Drug, and Cosmetic Act (21 USC Section 348)

Purpose: To guarantee that food additives are safe.

Procedure to Achieve Compliance: Permission is obtained from the FDA by showing that food additives meet general standards of safety. The procedure to obtain approval is to file a petition for approval. After information rule-making procedures, the FDA decides whether to grant, deny, or conditionally grant petitions. Any dissatisfied person can demand a second, formal, on-the-record hearing on the same issues. The FDA's decision will be final only after the second set of hearings and a court review (although its provisional decision will take effect in the meantime). No additive can be approved of as safe "if it is found...to induce cancer in man or animal" (Delaney Clause, 21 USC 348(c)(3)(A). This clause has let to controversy because it bans any substance, no matter how beneficial, if that substance produces a risk of cancer.

Once an item is marketed, the FDA can withdraw its permission if it subsequently believes that a substance is unsafe. The withdrawal procedure is similarly elaborate: The FDA conducts a "notice and comment informal rule-making proceeding to issue a rule withdrawing approval. It must go, on request, through a second, formal, on-the-record proceeding before the withdrawal of approval becomes final. Requirements do not apply to grandfathered additives, i.e. those having received informal government approval before the 1958 amendments. As well, those additives that are "generally recognized among experts...as safe" (GRAS) are also exempt. If the FDA considers it a necessity to remove an item from the GRAS list, the manufacturer is required to go through a lengthy approval process. The FDA makes frequent use of advisory committees (see under Advisory Committee).

Responsibility: The manufacturer must show that an additive is effective and safe by producing at least four and possibly more than ten valid studies involving rodent and non-rodent toxicity, cancer and other tests.

Enforcement: The FDA decides whether to grant, deny, or conditionally grant petitions. Court action and seizure of food, are two enforcement options.

Evaluation: Given the difficulties of obtaining approval and of withdrawal, only a few new additives are approved and still fewer have their approvals withdrawn. Criticism of the screening procedures refer to the arbitrary selection of items. Rules are far stricter for new additives than for those already on the market in order to determine if they should be removed. There is a lack of cost-benefit analyses. Dangerous products may be on the market too long because of the lengthy withdrawal process.

References: Stephen Breyer. Regulation and Its Reform. Cambridge, Harvard University Press, 1982. Chapter 6.

Code: US-O-a-2

Country: US

Type of Regulation: Health

Name of Agency: Food and Drug Administration

Program Title: Advisory Committees

Initiation and Termination Dates: n/a

Relevant Legislation: Food, Drug, and Cosmetic Act (21 USC Section 355 (d)(5)

Purpose: To remove inefficacious prescription drugs from the market.

Procedure to Achieve Compliance: Individual products are screened and an evaluation of scientific and technical data provided by the manufacturers is carried out. The FDA asked the National Academy of Sciences--National Research Council, to form drug efficacy review panels composed of well-recognized academic medical researchers and clinicians in order to perform screening. The FDA proceeds against those drugs the panels deem lack adequate evidence of efficacy. The FDA has been able to avoid formal hearings through the insistence that the manufacturer presents proof of efficacy.

Responsibility: The FDA has turned to the outside Advisory Committee to carry out its statutory duty of removing inefficacious prescription drugs from the market. Written explanations for the committee recommendations are provided, decisions are open to judicial review.

Enforcement: n/a

Evaluation: The Courts have maintained this legally dubious procedure because the task that Congress had given the agency could not be accomplished through conventional procedures, but also because the high caliber and the non-partisin character of the advisory committee provided assurance of scientific integrity. The job could never have been accomplished through formal hearings. Charges that cumbersome agency reviews and approval practices were creating a 'drug lag' were defused. Most recommendations are adopted as a basis for decision and have never been overturned by a reviewing court. There is an unwillingness on the part of the courts to second-guess the FDA on public health questions. There has been increased manufacturer respect for the regulatory process and for FDA policy discretion.

References: Richard B. Stewart. "Regulation, Innovation and Administrative Law: A Conceptual Framework". California Law Review Vol 69, No. 5. September 1981, pp.1263-1377.

Code: US-O-a-3

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/Dept. of Labor

Program Title: Standard Setting

Initiation and Termination Dates: 1971

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 6

Purpose: To assure safe and healthful working conditions.

Procedure to Achieve Compliance: Section 6 provides for 3 kinds of safety and health standards:

(1) Interim standards: To be published immediately after the effective date of the Act and issued for two years thereafter. These are restricted to already established Federal standards, such as those applicable under the Welsh-Healey Act and national 'consensus standards' (those issued by the American National Standards Institute and the National Fire Protection Agency);

(2) New or permanent standards. These are issued when there is a necessity. They are adopted only after a careful review process has been completed. This process includes having received a criteria document from NIOSH, reports issued from interest groups and the set up of a committee with an equal number of representatives from labor, management and at least one member from State health and safety. The proposal is published in the Federal Register (FR) and the new rule, modifications or revocations, and comment times are listed. If written objections are received, public hearings are held. After these hearings standards can be promulgated through publication in FR along with the standard and statement of reasons. The effective date may be delayed for 60 days in order for employers to become familiar with the law;

(3) Emergency standards. These are issued only if the Secretary decides that employees are in imminent danger. These are effective on the date of their publication in FR. There are no hearings or comments. OSHA must begin the process of setting a new standard immediately. Within six months, the emergency standard must be replaced by a permanent one. All three kinds of safety and health standards demand that certain considerations be taken into account. With reference to interim standards, their technical and economic feasibility must be

weighed and there is a requirement that an economic analysis of the expected effects of such standards are developed. New or permanent standards must be based on the latest scientific evidence in the field. Where emergency standards are concerned, the previous experience under other laws (sect. 6(b)(5)) is a factor to be considered. These standards apply to physical and not to behavioral hazards in the workplace.

Responsibility: Most current health standards are based upon exposure limits published by the American Conference of Governmental Industrial Hygenists (1968). In addition, most safety standards rely upon the American National Standards Institute publications of the 1960s. The economic analysis, the content of the proposal and the final regulation is subject to reviews by the Office of Management and Budget (OMB) prior to publication by OSHA. All new standards are almost invariably subject to review by the Court of Appeals after a party challenges their validity. Employers can file notices of contest under Section 6(f).

Enforcement: Through inspections and subsequent penalties in the case of non-compliance. Standards are only effective where physical hazards are permanent and obvious enough for an inspector to cite. Behavioral or transitory hazards, which account for the majority of injuries, cannot be attacked. There are 4,000 standards, a number which makes enforcement virtually impossible.

Evaluation: There is dissatisfaction with the length of time required to propose and promulgate new standards. In the first 13 years, OSHA issued only 11 new or revised health standards concerning 24 specific chemical substances, and 1 standard concerning exposure to noise. Many OSHA standards lag behind recommendation and voluntary standards. The program emphasizes safety significantly over health, for instance, it is aimed at preventing accidents over preventing occupational illness. This is considered to be a displacement of enforcement goals (Thompson, p.100) as industrial disease ranks as a more serious problem. There is means-ends uncertainty given that State enforcement emphasizes health even less. The Federal bureacracy holds a marginal edge in terms of health enforcement.

By 1984, work on new standards had come to a halt. At that point all energies were devoted to a review of existing standards. This lead to a condition where standards already in existence were weakened further. Standards are enormously difficult to adopt or to change if they are so stringent as to be controversial. Compounding the delays in standard-setting are the changes going on with reference to technology and materials. Once promulgated, standards are expensive and difficult to enforce. There continue to be disputes of the 'feasibility' of standards. Court decisions refer to economic impacts as well as do executive orders. Investments for health and safety are declining (table 13.2, p. 263 OTA). Research results regarding the effectiveness of enforcing standards in relation to the prevention of injuries is mixed. They refer mainly to mining and to exposure levels of substances such as venyl-chlorides, asbestos, lead, and cotton dust.

The literature suggests that the upgrading of regulations should be easier and this upgrading should not have to apply the same rule-making procedures as those applied to new health hazards. As well, OSHA should be required to respond to NIOSH criteria documents.

References: OTA Preventing Illness and Injury in the Workplace. Washington, 1985. Chapter 1, 12, 14. Andrew Szasz; "Industrial Resistance to Occupational Safety and Health Legislation" Social Problems, Vol. 32, No. 2. December, 1984. Robert Stewart Smith The Occupational Safety and Health Act, Washington, America Enterprise Institute for Public Policy Research, 1976.

Code: US-O-a-4

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/ Department of Labor

Program Title: Variance Standards

Initiation and Termination Dates: 1971

Relevant Legislation: Occupational Safety and Health Act, 1970, Section 6.

Purpose: To assure safe and healthful working conditions.

Procedure to Achieve Compliance: An employer may be granted a permanent variance from a standard after an inspection and a hearing where his employees can attend, if he can demonstrate by a preponderance of evidence that he provides employment which is as safe and healthful as if he complied with the standard. A temporary variance may be granted if he demonstrates that he cannot comply with the standard by its effective date because of labor or material shortages and if he proves that he is taking all available steps to ensure that his employees are safeguarded from the hazard. He must also demonstrate that he is intending to come into compliance as soon as possible. A temporary variance, including renewals, cannot last for more than two years. The economic impact of compliance with a standard is not to be considered in the decision to grant a temporary variance, according to Congressional intent.

Responsibility: Employers are fully responsible for safety. OSHA or a State agency can negotiate variance agreements.

Enforcement: Through inspections and subsequent penalties in cases of non-compliance.

Evaluation: **References:** Robert Stewart Smith; The Occupational Safety and Health Act, Washington, American Enterprise Institute for Public Policy Research, 1976.

Country: US **Code: US-O-a-5**

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/ Department of Labor

Program Title: Noise Level Standard Setting

Initiation and Termination Dates: 1970

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 6

Purpose: To assure safe and healthful working conditions.

Procedure to Achieve Compliance: OSHA began new noise regulation in 1972. The original standard was passed under the interim procedures of the OSHA Act and limited noise to 90 decibels (dBA) per eight hour day. If noise levels were 95 dBA, workers could only be exposed for four hours and could not then be exposed to noise over 90 dBA for the rest of the day. Exposure to 100 dBA is limited to 2 hours and impulse noise may not exceed 140 dBA. Engineering controls or worker job rotation had to be used in order for the firm to come into compliance. Only if these measures were not feasible could personal protection equipment (earplugs, earmuffs) be used to reduce sound levels. On August 14, 1972, NIOSH issued a criteria document which called for 8 hour exposure to be limited to 85 dBA, 4 hour exposure to 90 dBA and 2 hour to 95 dBA. Impact noise should not exceed 115 dBA. OSHA commissioned an economic impact study to estimate the costs of compliance with the 90 dBA standard, which was not being completely enforced, and with the NIOSH alternative. The study estimated the cost of compliance for manufacturing industries alone to be $13.5 billion and $31.6 billion for the two alternatives. Publication of the proposal in the Federal Register was in October 1974.

The standard remained unchanged at the original exposure levels. OSHA's decision explicitly recognized the greater risk of hearing loss to which employees would be exposed, but argued that the reduced risk was not worth the added cost of the 85 dBA standard. This decision was not based upon any study which attempted to estimate worker's willingness to pay for reduced risks. OSHA received over 800 comments on its proposed standard. The EPA criticized the high dBA levels and proposed individual standards. By 1980, no permanent noise rule was yet established and there was continuance of the interim standard.

Responsibility: OSHA with appeals permitted through the courts.

Enforcement: Through publication of final rules in the Federal Register; through inspections and penalties.

Evaluation: Personal protection devices are considered to be insufficient protection by both workers and unions.

References: Robert S. Smith; The Occupational Safety and Health Act. Washington, American Enterprise Institute for Public Policy Research. 1976. Steven Kelman; Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy. Cambridge; MIT Press, 1981.

Code: US-O-a-6

Country: US

Type of Regulation: Environmental

Name of Agency: Environmental Protection Agency (EPA)

Program Title: Bubbles

Initiation and Termination Dates: December 1979; amended April 1982

Relevant Legislation: 44 FR 71779, 11 December 1979, 47 FR 15076, 7 April, 1982, Clean Air Act, 1977, Section 120; 42 USC, 7401-7642.

Purpose: To increase the economic incentives to reduce air pollution and to promote greater technological innovation to improve air quality. To reduce the barriers to modernization and litigation.

Procedure to Achieve Compliance: The term 'bubble' arises from the figurative notion that many emissions on points are aggregated under one umbrella or bubble. Bubbles set standards that allow flexibility through trade-offs between easy and hard to handle emissions. It sets the total amount of allowable pollution in order to allow source flexibility in tackling problems.
The 1977 bubble policy was very limited: it could be used only in areas that could demonstrate attainment with the ambient standards set by the statutory deadlines. Since the EPA and the States had not completed many of the new SIPs (State Implementation Plans) this provision greatly reduced the use of such intraplant trades. All bubbles had to be treated as SIP changes and were, therefore, subject to the pertinent procedural requirements at both the Federal and the State levels. The EPA added the requirement of air quality modelling (at the owner's expense) in order to demonstrate that the bubble would not lead to violations of ambient standards.

The 1982 amendments liberalized the rules. States were allowed to develop their own generic trading rules as long as emission reductions were permanent, quantifiable and enforceable. In this way, areas that do not meet ambient air quality standards are allowed to use emission trading, substituting trading for technology in meeting reasonable available control technology standards. This eliminated burdensome requirements for air quality modeling and relieved the States of the need to submit revisions of SIPs.

Responsibility: EPA sets nationally uniform ambient air quality standards and the States develop SIPs (State Implementation Plans). State generic trading rules remain subject to Federal audit and to possible override. The EPA conceives SIPs as collections of approved procedures for developing or changing emission limits rather than collections of fixed limits. The EPA has become the manager who audits the State programs instead of the regulator.

Enforcement: Through permits and monitoring. The penalty procedure falls under the enforcement procedures of the Clean Air Act.

Evaluation: The bubble policy is directed at existing, not new sources, and evolved from efforts to deal with specific cases. Bubbles forgo control opportunities and most innovations are plain rearrangements of conventional technologies (actual vs. on paper reductions). There are difficulties in measuring and assessing the amount of emission. The bubble policy sometimes speeds up compliance and flexibility, but not innovation. It is used as a delaying strategy. There is a link of effluent limits with available technology which discourages innovation.

The inconsistencies in EPA policy and court decisions point to the importance of public and administrative scrutiny (Levin, 1982). This policy must start as a supplement not as a replacement policy and, in addition, must provide certainty and benefits large enough to outweigh disruption costs. As well, there must be an effort to build upon constituancies and to have institutionalized support and implementation structures and resources to be successful.

Court reversals and the economic impracticality of imposing technology requirements on plant modernizations have frustrated the EPA's attempts to define the new source as the entire plant, with the objective to allow new pieces or new facilites to escape lowest achievable emission rates or the best available control technology. The EPA has thus succeeded in disentangling the concept of further progress of the technology requirements for plant modifications. The courts could prevent the plant wide approach in non-attainment areas. LAER or BACT standards are maintained for completely new plants. New plant construction, however, reflects a declining share of private fixed investment. There are geographic limitations to trading. The given quantity of an emission may have different effects, such as dispersion problems, on various locations and there is a problem of the uncertainty created by the continuing SIP process.

References: Richard A. Liroff, Bubble Policy for Existing Sources in Practice. Michael Fix; "Transferring Regulatory Authority to the States" in The Reagan Regulatory Strategy, ed. George C. Eads. pp.153-179. Michael H. Levin, "Getting There: Implementing the Bubble Policy" in Social Regulation: Strategies for Reform ed. lll Eugene Bardach and Robert A. Kagan. San Francisco, Institute for Contemporary Studies, 1982. pp.59-92. Robert W. Crandall, Controlling Industrial Pollution. Washington, The Brookings Institute, 1983

Code: US-O-a-7

Country: US

Type of Regulation: Health and Safety

Name of Agency: Department of Labor, Occupational Safety and Health Administration (OSHA), Review Commission

Program Title: Settlement Agreements

Initiation and Termination Dates: 1971

Relevant Legislation: OSH Act, Sect. 10(c) 29 CFR P2200-101

Purpose: To avoid contesting citations by the OSHA through a settlement agreement; to reduce the appeals procedure and related costs.

Procedure to Achieve Compliance: Negotiations occur before a settlement judge. Rather than institute a formal appeal, employers negotiate with OSHA. Employees have the right to appeal a proposed settlement agreement. The agreement outlines the commitment to the mediation procedure and outlines an incentive program to reduce penalties for compensatory/remedial action.

Responsiblity: The OSHA Review Commission. Court decisions have clarified the role of employees and of the employer, but there is uncertainty as regards the administrative and judicial court of appeal. In 1982 the District Director received the authority to negotiate citations.

Enforcement: There is a risk of large penalties for violators. The incentive program resulted in negotiation for the reduction of penalties in return for mitigation commitments.

Evaluation: The roles for employers and employees are relatively unclear as court decisions have resulted in differing conclusions. In some decisions the employees may challenge all aspects of citations while in others it is only the reasonableness of the abatement period that may be questioned. Arbitration through the district director considerably reduced the size of penalties. Whether co-operation was increased or the program reduced the deterrence was not clear.

Code: US-O-a-8

Country: US

Type of Regulation: Health and Safety

Name of Agency: OSHA Workers' Compensation Boards (WCB)

Program Title: Workers' Compensation

Initiation and Termination Dates: unknown

Relevant Legislation: Federal and State Legislation. Occupational Safety and Health Act, 1970, Sect. 27; Diverse Worker's Compensation Acts.

Purpose: To provide workers suffering from workplace injuries and illnesses with medical treatment and to compensate for income lost; to prevent injuries and illness. To alleviate loss of income and to provide for the substitution of uncertain liability judgements with regular, fixed and predictable compensation payments.

Procedure to Achieve Compliance: Employers pay into the WC insurance a fee which is based upon their historical record. This provides an incentive to report fewer cases in order to pay lower insurance premiums. There are several systems of rate:

(a) manual rates: based on average experience for industry or line of business--used largely by small firms.

(b) self-rating: based on prediction--used mainly by large firms.

(c) merit-rated: experience or retrospective rating based on the last 3 years.

Prevention of injuries lead to premium savings. Within category (a) firms may be pooled into an "assigned risk group". States generally replace 2/3 of lost wages to a maximum amount (ceiling). Many States have mandatory waiting periods as well.

Responsibility: The removal of the right of workers to sue employers for compensation.

Enforcement: Besides the provision of claims through WC, there is a court-enforced tort liability with provision to sue for monetary compensation from producers of equipment and material (eg. asbestos).

Evaluation: There is a tendency to "cover up" or to force individuals to take vacations rather than report incidents to WC. The literature on the effect of premiums categories on injury rates is not conclusive. There is no replacement for lost fringe benefits. The ceiling of compensation is often so low that it does not reach 2/3 of the worker's income:

earning replacements may be as low as 46% (California); 59% (Florida); or 75% (Wisconsin). WC does not pay for pain or for the loss of physical capabilities. Nichols' study suggests that to reduce injury WC must be changed to provide greater incentives for safe and healthy workplaces, or exposures (similar to pollution) that do not directly result in loss of wages. Often people do not apply for WC, because there are difficulties in making claims for occupational diseases (may be as low as 5% receiving WC). WC provides only limited incentive for prevention.

References: OTA; Preventing Illness and Injury in the Workplace , Washington, 1985, chapter 15, pp. 303-309. Nichols, Albert A. and Richard Feckhauser; "Government Comes to the Workplace: An Assessment of OSHA", The Public Interest, No.49, Fall 1977, pp. 39-69.

Code: US-O-a-9
(see also US-O-a-ll, and US-O-b-2)

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency or Department: Occupational Safety and Health Administration (OSHA)

Program Title: Voluntary Protection Program

Initiation and Termination Dates: unknown

Relevant Legislation: OSH Act Section 2(b)(2)

Purpose: To eliminate or reduce hazards in uninspected workplaces. (Pre-inspection Compliance)

Procedure to Achieve Compliance: In several States, employers are exempt from programmed inspections if they receive an OSHA consultation and thereafter correct all serious hazards. It has been suggested that labor unions and the public have additional input when voluntary standards are drafted. In addition to this that labor-management health and safety committees be supported by OSHA in companies which particitpate in Voluntary Inspection Programs.

Responsibilty: To provide inspections for safety and health hazards.

Enforcement: Through inspections and penalties. The priority order for inspections is as follows: imminent danger; fatality investigations; employee complaints; special inspections programs; and programmed inspections.

Evaluation: The program has been criticized for providing insufficient protection. It is suggested that OSHA should expand the Voluntary Protection Program and increase funding for training and consultation. As well, OSHA should offer technical assistance. The incentive for pre-inspective compliance is small, the percentage of health inspections increased until 1979 and then dropped again.

Reference: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985, Chapter 1.

Code: US-O-a-10

Country: US

Type of Regulation: Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/ National Institute for Occupational Safety and Health (NIOSH)

Program Title: New Directions Program (Education)

Initiation and Termination Dates: 1978 -

Relevant Legislation: OSH Act Section 21 (c) OSHA Employer Abatement Assistance Instructions

Purpose: To provide grants to employee, employer, educational, and non-profit organizations for the purpose of providing workplace health and safety training, resources, and services for employers and employees.

Procedure to Achieve Compliance: To award grants to labor unions, trade associations, universities and non-profit institutions for the purpose of developing and conducting training and education programs. To focus on worker training and to a limited degree to train supervisors. Inspectors are required to issue citations and to provide general assistance to employers in identifying abatement methods for alleged violation.

Responsibility: OSHA has provided the bulk of funds although money has been transferred from elsewhere, for example, from the National Cancer Institute, NIOSH, the Federal Emergency Management Agency, and the National Institute of Mental Health.

Enforcement: Through a consultation process whereby employers and employees are advised as to effective means of preventing occupational injuries and illnesses.

Evaluation: Although the program is not a successful as it could be, it is seen as useful by many health and safety professionals. In recent years funding has been reduced. OTA recommendations include a requirement that all occupations receive training and instruction rather than just a few. In addition to this, in times of economic downturns, health and safety professionals are the first to be laid-off.

References: OTA; Preventing Illness and Injury in the Workplace , Washington, 1985; Chapter l. (Examples: International Brotherhood of Painters and Allied Trades; Labor Occupational Health Program at the University of California, Berkeley.)

Code: **US-O-a-11**
(see also US-O-a-9)

Country: US

Type of Regulation: Health and Safety

Name of Agency: Construction Trades/OSHA/WCB.

Program Title: Cooperative Compliance Program

Initiation and Termination Dates: unknown

Relevant Legislation: Occupational Safety and Health Act

Purpose: This is a co-regulation for effective on-site safety and primarily functions to avoid work delays following OSHA inspections and to reduce reliance upon OSHA. In addition it functions to provide incentive through reduced premiums and to promote savings through increased safety in the work place.

Procedure to Achieve Compliance: To set up in-house safety programs and to provide standards for them. Unions train their own safety inspectors with management participation. To keep records demonstrating compliance with the Act and to report injuries and exposures to hazards. OSHA audited private enforcement programs then the Premium Payment System of WCB took over and replaced OSHA inspectors.

Responsibility: WCB, Construction Company. The WCB's responsiblity replaced OSHA as the prime regulator.

Enforcement: The OSHA is envisioned as the enforcer of last resort, WCB now provides civil and administrative penalties for non-compliance. The premium system of the WCB rewards safe contractors and works as an incentive program. Management accountability has been developed in order to identify weaknesses in the existing management systems. The Private Sector Safety Department has taken a new role in developing standards, developing an effective management information system and in demonstrating the benefits of the program. The new role of the OSHA is to emphasize problem solving; the long hierarchy of command has been replaced and now the OSHA simply mails a brief report.

Evaluation: The program has been successful in terms of declining accident rates.

References: See: Joseph V. Rees; "Reforming the Workplace: A Study of Self-Regulation in Occupational Safety", PhD Thesis, University of California at Berkeley, 1986.

Code US-O-a-12

Country: US

Type of Regulation: Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/Department of Labor

Program Title: Example: Benzene Standards

Initiation and Termination Dates: 1978

Relevant Legislation: n/a

Purpose: To provide safe and healthy workplaces.

Procedure To Achieve Compliance: In order to establish a stringent standard for benzene, OSHA must first determine that the hazard poses a significant risk. Then OSHA determines regulatory action can reduce the risk and a regulatory goal is set. The final step is to conduct a cost-effectiveness analysis in order to quantify risk assessment.

Responsibility: OSHA must make a threshold finding that the workplace is unsafe in order to impose more stringent standards. Standards can be challenged in court and in the past the court has invalidated standards.

Enforcement: This is achieved through inspections, investigations, and record-keeping (Section 8 OSHA). Penalties fall under Section 17 OSHA.

Evaluation: The petroleum industry challenged the benzene standards in Court of Appeals. This Court ruled that Section 3(8) i.e."reasonably necessary or appropriate" of the OSHA Act meant that benefits must bear a reasonable relationship to costs. This functioned to erect a cost-benefit decision rule. The Court rejected standards because there were no discernable benefits. The Supreme Court upheld the ruling that OSHA had exceeded its authority. It is not clear what exact criteria apply due to the limitations of risk and cost-benefit analyses.

References: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 12, P.283-284.

Code:US-O-a-13

Country: US

Type of Regulation: Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Example: Lead Exposure Standard

Initiation and Termination Dates: 1978

Relevant Legislation: n/a

Purpose: To set limits on ambient concentrations of the metal in workplace air.

Procedure To Achieve Compliance: There is a limit of 50 micrograms per m3 for workplace air concentration. Exceptions to this include primary and secondary lead smelting and lead acid battery manufacture. Two features which are included in the lead standard are: medical removal protection (for example, if the lead level in blood increases above 50 micrograms/100g of blood) which requires the employer to remove the worker from exposure and to maintain wages and seniority status for up to 18 months; and an extended time period, granted under selected guidelines, which provides from 3-10 years before engineering controls to attain the limit are required.

Responsibility: Compliance costs are estimated at from $2,800-$4,300 per year.

Enforcement: This is achieved through inspections, investigations and record keeping as per Section 8, OSHA. Penalties fall under Section 17, OSHA.

Evaluation: Effective levels for the concentration of lead in air are between 50-100 micrograms. Lead levels are slowly being brought down. There have been significant decreases in the levels of lead in blood, particularly between 1977-1982. For effective respirator programs and more information on Medical Removal Transfers see OTA, p.94, Tables 5-8, also, Table 5.9 on p.95.

References: OTA, Preventing Illness and Injury in The Workplace. Washington, 1985, Chapter 5.

Code:US-O-a-14

Country: US

Type of Regulation: Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Example: Silica Dust Standard/Target Health Hazard Program

Initiation and Termination Dates: 1971

Relevant Legislation: OSHA Section 8, 17; Silica Dust Standard

Purpose: To reduce the exposure to silica dust to a safe level.

Procedure To Achieve Compliance: The silica level was set up in 1971 with a standard of 100 micrograms of free silica per m3. In 1972 OSHA made a special effort to enforce the existing standards through processing health inspections on places where silica was likely to be found. In 1974 NIOSH recommended that this be reduced to 50 micrograms. In 1978 OSHA undertook an assessment of silica in blasting, however, there have been no revisions of standards based on this study as late as 1985.

Responsibility: The EPA sets standards.

Enforcement: Inspections, investigations and record keeping under Section 8, OSHA. Penalties are listed under Section 17 OSHA.

Evaluation: The current OSHA standard is inadequate and is based on outdated information. Compliance with this standard is insufficiently monitored. Accurately measuring silica concentrations is expensive and difficult. There is too much reliance on after-the-fact control measure rather than upon the development of methods to eliminate the dust altogether. It may be that the failure to protect workers is a result of the cost of controlling exposures.

Reference: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 5.

Code US-O-a-15

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: National Institute for Occupational Health and Safety (NIOSH)

Program Title: Project Minerva--Education

Initiation and Termination Dates: early 1980's

Relevant Legislation: No particular reference

Purpose: To train OHS professionals and managers in specialized areas of OHS. "It is designed to encourage the nation's schools of business to integrate the management of safety and health principals into their existing curricula.

Procedure To Achieve Compliance: Sixteen schools have been targeted by NIOSH for special assistance. This assistance takes the form of a 3 phase effort. In the 1st phase, the business schools are alerted of the need to instruct OSH. The second phase is that of energizing and facilitating the provision of necessary information and instruction. In the 3rd phase the schools which are participating in the program are provided with instructional experiences and other resources.

Responsibility: NIOSH develops the course material. This material may include series of case studies, lecture modules, books of readings and annotated bibliographies.

Enforcement: The target of this program is to have all business administration schools teach OHS by the turn of the century.

Evaluation: The concept has been well received in the business schools visited. The schools need time and resources to develop course materials. In industry, the committment to safety and health must begin at the top levels of organizations.

References: Division of Training and Manpower Development; Project Minerva: Management Education for Safety and Health, National Institute for Occupational Safety and Health, Cincinnati, Ohio; January, 1984.

Code:US-O-a-l6

Country: US

Type of Regulation: Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Example: Cotton Dust Standard

Initiation and Termination Dates: 1971; new standards 1978

Relevant Legislation: Walsh-Healey Public Contracts Act 1936; Construction Safety Act 1969; 41 FR 56498-527 (1976); 43 FR 27350-418 (1978)

Purpose: To set acceptable limits for the exposure of workers to cotton dust in the workplace atmosphere.

Procedure To Achieve Compliance: The 1966 American Conference of Governmental Industrial Hygenists (ACGIH) recommended, and Congress agreed upon, a Threshold Limit Value (TLV) of 1,000 micrograms per m3 as the maximum exposure allowed in the workplace. In 1969 the Secretary of Labor incorporated the TLV into Federal Standards. in 1970 OSHA adopted the Walth-Healey Act, which was accepted as the standard as of 1971. In 1974 ACGIH revised the TLV to 200 micrograms per m3. In 1976 OSHA also proposed this standard, and in 1978 set 3 exposure limits: 200 micrograms for cotton yarn manufacturing; 750 micrograms for slashing and weaving; and 500 micrograms for other operations. These standards were contested by the textile industry and the Supreme Court supported its position, subsequently OSHA moved to reconsider its position.

Responsibility: The standards cover employees working for employers with contracts with the Federal Government which exceed $10,000 in value; the Construction Safety Act extended the coverage.

Enforcement: no specific information available

Evaluation: The OSHA rule had a dramatic effect, it forced machine suppliers to modify equipment in order to comply with the regulation. This led to the replacement of outdated machinery. There was a much lower cost for compliance to the rule than was initially assumed. Although most of the currently used machinery was available in the mid 1970's, its potential use had been ignored. For case study material refer to OTA (North Carolina). The regulation served to require that new equipment be installed, this resulted in improved productivity.

References: OTA; Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 5.

Code: US-O-a-17

Country: US

Type of Regulation: Health and Safety

Name of Agency: Food and Drug Administration (FDA)

Program Title: Screening of Food Additives

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Food, Drug, and Cosmetic Act (21 USC, *301-302 (1980)

Purpose: To assure safe and healthful working conditions.

Procedure To Achieve Compliance: Through differentiation of old and new risks; to provide advance scrutiny and approval of food additives (new risk source)

Responsibility: The burden of initiation is on the regulatee, this includes the cost of acquiring necessary information. The regulatee also bears the risks and costs of regulatory delay. The FDA acts as guardian at the gate, not as incremental environmental upgrader, and thus is less constrained by economic expectations and generally can be more sweeping than standard setting.

Enforcement: Permission or withhold to market product.

Evaluation: Screening regulates at the strict margin of scientific uncertainty. This does not represent the lost opportunity costs of screening out a product. There is a necessity to also address social costs. There is a tendency towards a "technology-freezing impetus" (Hubur, p.1062). There is a perceived bias towards a delay of screening decisions. One suggestion for comparative risk regulation is to compare a product with similar products on the market or with functional substitutes.

References: Peter Huber. "The Old-New Division in Risk Regulation." Virginia Law Review, Vol. 69, 1983, pp. 1025-1107.

Code:US-O-a-18

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Adiministration (OSHA)/Dept. of Labor

Program Title: Benzene Standard Setting

Initiation and Termination Dates: 1970

Relevant Legislation: Occupational Safety and Health Act, 1970, Section 6

Purpose: To assure safe and healthful working conditions.

Procedure To Achieve Compliance: In 1978 OSHA promulgated a new standard governing occupational exposure to benzene, a suspected human carcinogen. Initially it had established a screening practice of use-permit, but this was challenged as OSHA had no authority to establish such a system. Through establishment of exposure standards it intended to come as close as possible to excluding the chemical from the workplace. The 1978 standard established an exposure level of 1 part per million (ppm), down from 10 ppm. OSHA had received a criteria document from NIOSH as well as reports from interest groups. The proposal was published in the Federal Register, the entry included a description of the new exposure level and a rational, as well, comment time was provided. Written objections were received and public hearings were held. The final rule was published in FR along with the new standard and statements of objections.

The petroleum industry presented evidence that the change from 10 to 1 ppm of exposure would prevent, at most, one case of leukemia and one additional cancer in the entire industry every six years. OSHA rejected this estimate, and the final standard stood at 1 ppm. This standard was challenged at the Supreme Court. The Court ruled that there was enough that was procedurally wrong in the history of this standard setting to require the OSHA to re-evaluate the standard. Considerations to be taken into account include: a) the technical and economic feasibility of standards (with a requirement to develop an economic analysis of expected effects); b) the latest scientific evidence in the field; and c) the previous experience under other laws (section 6(b){5}). Standards apply to physical and not to behavioral hazards in the workplace.

Responsibility: The standard was challenged in court. The Court of Appeals and then the Supreme Court ruling of July, 1980, stated that OSHA's standard was to be voided. One of the five concurring Justices agreed with the lower-court ruling that OSHA was required to weigh both the costs and the benefits of its standards and the majority agreed that OSHA could not mandate a reduction of benzene exposure limits from 10 ppm to 1 ppm without demonstrating that exposures of 10 ppm cause cancer. OSHA had evidence that very high exposure levels caused cancer, but the Court argued that OSHA must show that changes in its standards have at least some benefits before they can be validly promulgated.

Enforcement: n/a

Evaluation: The problem is that centrally set and bureaucratically administered standards are not the least-cost way of achieving more safety. This challenge was based on feasibility. Standard-setting systems directed at old risks invariably contain some limit to their transition costs that regulations may impose on an industry. Huber argues that the regulatory domain be divided into old and new sources of hazards and between old and new workplaces in a similar way. The EPA has regulated on the basis of old and new sources of pollutants (Huber, p.1070).

References: Peter Huber. "The Old-New Division in Risk Regulation." Virginia Law Review, Vol. 69, 1983, pp. 1025-1107.

Code:US-O-a-19

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/Dept. of Labor

Program Title: Asbestos Level Standard and Enforcement

Initiation and Termination Dates: 1970

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 6

Purpose: To assure safe and healthful working conditions.

Procedure To Achieve Compliance: To set a permanent standard. The OSHA began new regulation in 1972 after an interim standard adopted under the OSH Act established a value of 2 fibers per cubic centimeter. Compliance is sought through the use of regular inspections and monitoring.

Responsibility: OSHA initiates the setting of a binding standard.

Enforcement: Through the use of penalties.

Evaluation: There is a substantial lack of compliance. The probability of both general and programmed inspections and employee complaint-initiated inspections increases with the number of citations per inspection. Less asbestos-intensive sectors are less likely to be inspected.

Enforcement sanctions are not characterized by cost sensitivity. Unionization affects general inspections to a greater degree than complaint-based inspections. Firms trade off compliance versus the low cost of non-compliance. Penalties increase significantly with the number of citations, the number of sample violations, and maximum exposure levels. Penalties increase with the average cost of compliance per employee. For example, enforcement agents are sensitive to the need for increased penalties in higher costs sectors in order to create incentives to comply. The length of the abatement period increases per citation for engineering and information citations, but not for other kinds of citations.

The employee presence encourages the OSHA to cite marginal violations. The share of workers exposed to asbestos and the exposure to major hazardous substances have a powerful effect on the probability of a second general inspection.

References: Peter Huber. "The Old-New Division in Risk Regulation." Virginia Law Review, Vol. 69, 1983, pp. 1025-1107.

Code:US-O-a-20

Country: US

Type of Regulation: Health/Food

Name of Agency: USDA

Program Title: Inspections

Initiation and Termination Dates: (probably) 1988

Relevant Legislation: Futures Trading Act, Title IV (1986) Public Law 99-641

Purpose: To protect the health and welfare of consumers by ensuring that meat and poultry products distributed are wholesome, not adulterated, and properly marked, labelled and packaged.

Procedure To Achieve Compliance: The amendment to the Federal Meat Inspection Act (FMIA) deletes the requirement that Federal inspectors inspect all meat food products in every establishment on a continuous basis. This requirement was replaced by a provision that permits the USDA to vary the manner and frequency of inspection and the assessment of various factors. These factors include: a) the nature and frequency of processing operations;
b) the adequacy and reliability of processing controls; and c) the history of compliance with inspection requirements.

Responsibility: The amendments are not effective until the Secretary issues rules and regulations prescribing how such inspections shall be conducted.

Enforcement: No data available

Evaluation: The proposed amendments are a more efficient and effective use of USDA resources. Pilot studies were undertaken in 1987 to determine that the new inspection program ensure the continuing success of the inspection program in general.

References: Executive Office of the President. OMB. Regulatory Program of the US Government. April 1, 1987 - March 31, 1988. Washington. pp.19-20.

Code:US-O-a-21

Country: US

Type of Regulation: Health and Human Services

Name of Agency: Food and Drug Administration (FDA)

Program Title: New Animal Drug Application (NADA)

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Food, Drug and Cosmetic Act, Section 512(1) 21 CFR •514 (Regulations setting forth the kinds of information and data to be submitted), also 21 CFR •510.300

Purpose: To ensure safe and effective new animal drugs.

Procedure To Achieve Compliance: New drugs for animal use must gain approval from the FDA. The applicant must provide scientific evidence that a drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's proposed labelling. There are currently no reporting requirements for marketed animal drugs. The proposed new rule provides for reporting requirements for marketed animal drugs. There is a proposal to file abbreviated NADAs for products identical to approved post-1962 drugs in certain cirumstances and for the omission of certain studies that are required in a full NADA. This would reduce duplicative testing and consequently, costs to the manufacturer.

Responsibility: There is a requirement for FDA approval of industry submitted applications for the marketing of new animal drugs.

Enforcement: see above

Evaluation: Regulations are revised only infrequently and these revisions do not fully take into account new scientific and technological developments. This has resulted in regulations that no longer adequately reflect the agency's practices. There is a failure to promote expeditious agency reviews. In some cases regulations are outdated and require unnecessary information.

The language of the regulation allows the industry to argue against submitting to the FDA pertinent information in the industry's possession. For example: With Type A medicated articles (pre-mixes) the industry did not submit adverse experiences known to them on the grounds that the sole responsibility for such reporting belongs to the user of the Type A medicated article (medicated feed manufacturer). There was also a failure to report negative experiences in foreign countries. There is a long standing recognition of the need to continuously monitor the marketing of drugs approved by the agency becuase the population upon which the product is tested is always only a small fraction of the population eventually exposed to the drug. Possible interferences with other drugs or substances only emerge in marketing. There is a need to make this regulation conform with those pertaining to the regulation of drugs for human use.

References: Executive Office of the President. Office of Management and Budget. Regulatory Program of the United States Government, April 1, 1987-March 31, 1988. Washington. pp.127-128.

Code: US-O-b-1

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)/ Department of Labor

Program Title: Record Keeping

Initiation and Termination Dates: 1971

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 8(c)

Purpose: To assure safe and healthful working conditions. To stop record keeping violations.

Procedure to Achieve Compliance: Compliance is determined through inspections, either in response to employee complaints or as part of the regular inspection program. Companies are required to keep records of work-related accidents, sickness, death, and employee exposures. Industries are ranked using the injury information from the Bureau of Labor Statistics. Employees and their representatives have the right to observe employer conducted exposure monitoring and to have access to records. Facilities whose accident records indicate a rate lower than the national average are rarely inspected, previously, there were no inspections at all. In 1986, 1 out of 10 low accident reporting firms were inspected.

Responsibility: The employer is required to comply with the standards promulgated under OSHA, and to those outlined in the Act. OSHA or State agencies have inspected injury and employment records since 1981. In 1983 there were 10,400 record reviews and 2,500 State record reviews. An employer may file a notice of contest of penalty to the Occupational Safety and Health Review Commission (OSHRC), which resolves disputes through use of an Administrative Law Judge. OSHRC decisions can be appealed through the Court of Appeals.

Enforcement: If inspections disclose a violation, the employer is cited and ordered to comply within a specified abatement period, the employer may also be fined. A serious violation is one which creates a substantial probability of death or serious physical harm: fines must be assessed at $1,000 for each violation. Fines for non-serious violations, although permitted, are not required. Willful or repeated violations may result in civil penalties of up to $10,000 for each violation; a failure to correct a violation within the abatement period may result in a fine of $1,000 per day. The only criminal penalties for violations of standards are attached to willful violations which lead to the death of an employee; these cases may result in fines of up to $10,000 and a jail sentence of up to six months. Employers may appeal citiations to the Occupational Safety and Health Review Commission. This is a three-member body appointed by the President. Decisions of the Commission are subject to review, if desired, by the Federal Court of Appeals. In 1986, OSHA increased the checks made of records and increased fines assessed to record keeping violations.

Evaluation: Inspectors cannot keep up with the volume of inspections required. Low fines assessed for record violations are not a deterrent. There are incentives to cover-up violations in order to be listed below the national average. This leads to an under-reporting of injuries and to employers forcing workers to take vacations rather than report injuries or work-related illness. In 1984 there may have been 7000 on-the-job deaths, 3,250 more than were reported.

References: Michael Marlow; "The Economic of Enforcement: The Case of OSHA", Journal of Economics and Business, Vol.34, No.2 1982, pp165-171. The Public Interest pp. 39-69. OTA, "Preventing Illness, etc." Chapter 1, 12.

Code: US-O-b-2
see also Case Studies

Country: US

Type of Regulaltion: Health and Safety

Name of Agency: OSHA

Program Title: Occupational Safety and Health Administration (OSHA) Consultation Progam

Initiation and Termination Dates: Permanently institutionalized, 1984

Relevant Legislation: OSH Act 1 FR 49 - 25082-25100, 19 June, 1984; Special Program OSH Act 21 (c); 18(b) 7(c)(1).

Purpose: To provide employers with a confidential evaluation of the health and safety hazards in their workplaces and to recommend means to abate these hazards.

Procedure to Achieve Compliance: Section 9(a) of the Act requires that when OSHA personnel discover violations of standards, the agency will, with reasonable promptness, issue a citation. In fact, OSHA must issue the citation. Direct consulation is limited to phone calls, letters, office visits and speeches. Under the contractual and grant mechanisms, sections 18(b) and 7(c)(1), OSHA pays for the visits by state personnel. Outside consultation to let employers know how their business measures up to relevant OSHA standards is provided at no cost to employers. There is a priority given to requests from small business. The aforementioned Special Program was experimentally instituted in 1982 and has been permanently in place since 1984. This program provides for cases where an employer has applied for, and received a consultation. The employer will not be programmed for another inspection for one year, provided all hazards detected during the consultation have been corrected and the core elements of an effective safety and health program have been implemented.

Responsibility: Under the requirements of Section 9(a) Federal OSHA personnel do not themselves conduct visits. State personnel are hired to do so. Visits occur only at the request of the employers. Results of the visit are then provided only to the employer and are not available to employees or the unions. While these two groups do not have a right to the information, employers may voluntarily pass it on.

Enforcement (see case study material for more details): In 1983 OSHA financed 28,000 visits at a cost of $23.4 million. This is a popular program which should be expanded to provide consultation to a greater number of employers, employees and unions.

In 1978 the General Accounting Office criticized OSHA in regard to the fact that the consulation program does not sufficiently ensure the protection of workers health and safety. There is continued controversy over enforcements vs. consultation. Given that the Special Program provides a one-year exemption from inspections, this program seems to provide little incentive to correct safety hazards.

References: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapters 1, 12. "Special Program", Occupational Safety and Health Reporter 14(3) pp.35-36, June 21, 1984.

Code:US-O-b-3

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupatioanl Safety and Health Adminstration (OSHA)

Program Title: Informal Conferences

Initiation and Termination Dates: 1980

Relevant Legislation: No Particular Reference

Purpose: To reach consensus on settlement; to issue citations to prompt abatement of hazards.

Procedure to Achieve Compliance: To reach settlements through an informal conference between the employer and OSHA's area directors. The conference is sought in order to facilitate prompt abatement of hazards and to improve employee health and safety. In addition, there will be a reduction in the amount of time spent by governmental personnel, employers, and employees needed to resolve contested citations. The first directive was issued in 1980.

Responsibility: The settlement agreement provides for the elimination of penalties or for penalty reduction to very low levels. Recent court decisions limit the rights of employees and unions to object to settlements that they view as insufficiently protective. If the employer is no longer contesting citations, the rights of employees and unions to object is limited to the "reasonableness of the abatement period."

Enforcement: This is achieved through citations.

Evaluation: It has been suggested that settlements may not sufficiently protect worker health and safety. Low penalties reduce or virtually eliminate the incentive for pre-inspection compliance.

References: OTA; Preventing Illness and Injury in the Workplace, Washington, 1985, Chapter 12, p.235.

Code: US-O-b-4

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Legislated Regulatory Calendar

Initiation and Termination Dates: not relevant

Relevant Legislation: Proposal: Litau & Nordhaus

Purpose: The proposal is that Congress will vote on particular proposals rather than on budgets.

Procedure To Achieve Compliance: OSHA would submit proposals to the Office of Management and Budget (OMB). The OMB would review the proposals and develop a set that the President would submit to Congress where they would be reviewed by a Review Regulatory Committee. The regulations for particular agencies would also be sent to traditional authorizing committees in order to defuse opposition to the new procedure. Both committees would send recommendations to Congress. There is no longer a budget ceiling.

Responsibility: One option presented results in agencies being unable to modify proposals authorized by Congress. Administrative rule-making is transformed to legislative rule-making. Building a record based on public hearings becomes secondary with this procedure (OSHA relies heavily on feedback to initial proposals). If agencies are allowed to modify, guidelines should be clearly written by Congress.

Enforcement: not relevant

Evaluation: not relevant

References: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 1.

Code: US-O-b-5

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Worker Participation in Standard Setting and Enforcement

Initiation and Termination Dates: 1971

Relevant Legislation: Health and Safety Act, 1970 Section 6,8(f), 116

Purpose: To assure safe and healthful working conditions.

Procedure To Achieve Compliance: Workers can request, and participate in, OSHA inspections. They may also participate in the proceeding of the OSHA Review Commission. In addition to this they may contest the reasonableness of abatement dates; participate in standard setting; and further, may request Health Hazard Evaluation form NIOSH. Under Section 8(f), employees and their representatives who believe an employer is violating health and safety standards, may request an inspection. Section 11(c) protects from job discrimination for exercising these rights. The OSHA schedules inspections to respond to what it determines to be valid complaints. The 1978 rule gives workers and their unions the right to obtain information concerning injuries and exposure levels. There is also a provision for a joint Labor-Management Health and Safety Committee.

Responsibility: The right to be paid to accompany an OSHA inspector was withdrawn under the Reagan administration. Employees do not have an independent right to contest the reasonableness of an agreement between OSHA and an employer concerning the nature of required controls, the type of citation or the amount of penalty.

Enforcement: The role of Safety Committees range from that the limited monitoring of the workplace routines to that of exerting strong pressure on workers, management and the OSHA. Further, employees have no right to pursue a court-ordered remedy independently; they have to rely on OSHA to negotiate settlements or to file suits.

Evaluation: Collective bargaining is useful for specific implementation of control and for monitoring employers actions, yet is limited in regard to health and safety. For example, only 20% of the US workforce belong to a labor union. There has been growth in the proportion of labor contracts which contain clauses related to health and safety committees. This portion rose from 18% in 1954 to 43% in 1981. There is also evidence of a positive correlation between the existence of these committees and the rate of injuries in the workplace. Employees who refuse to perform hazardous work may be protected if they are acting together and in good faith. This does not apply to an individual worker acting by him or herself. The experience in other countries suggests that there is an increase in worker's rights relating to job hazards, worker participation in health and safety decisions, the improvement of health and safety in general, and the ability of workers to refuse hazardous work.

References: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 1, and Chapter 15, p.316-319.

Code:US-O-c-1

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: Occupational Safety and Health Administration (OSHA)

Program Title: Tort Liability

Initiation and Termination Dates: not relevant

Relevant Legislation: No specific reference.

Purpose: To provide workers suffering from workplace injuries and illnesses with monetary compensation.

Procedure To Achieve Compliance: Through litigation. There are 4 areas of tort: negligence, where conduct has been below the standard established by law; product liability, where there is an implicit warrant that products are safe; nuisance; and strict liability, where the manufacturer is liable for injuries resulting from a defective product that is unreasonably dangerous. In addition to this, the 'duty to warn' has been the basis for many of the successful asbestos exposure law suits.

Responsibility: Through court decisions.

Enforcement: Through the court insofar as tort liability exists to sue for compensation from producers of equipment and products.

Evaluation: The burden of proof is often very difficult for workers. The importance of tort liability is as it functions to improve workplace hazards.

References: OTA, Preventing Illness and Injury in the Workplace, Washington, 1985; Chapter 15, p.311-313.

Code: US-X-a-1

Country: US

Type of Regulation: Energy

Name of Agency: Dept. of Transportation

Program Title: Fuel Economy

Initiation and Termination Dates: n/a

Relevant Legislation: 1975 Energy Policy and Conservation Act Amendments; 15 USC *2001-2012; 15 USC 2002(a)(l), (4)

Purpose: To improve fuel economy.

Procedure to Achieve Compliance: To set corporate average fuel economy standards for new cars produced in the US to achieve 27.5 miles per gallon in 1985 model cars with interim standards for previous years. The Secretary reduced the standard to 26 mpg for 1986. An arbitrary achievement level was first applied to 1978 cars. There is considerable interim flexibility achieved by gearing performance levels to what is feasible and in taking into account the requirements of other regulations such as air and safety. A system of carry-backs allows superior performance achieved in one year to be applied to shortfalls in other years. Waivers may be granted where necessary. Manufacturers with fewer than 10,000 vehicles annually can apply to the Secretary of Transportation for exemptions under which alternative fuel economy standards are tailored to the manufacturer's circumstances (15 USC *2002(c)). Congress enacted "gas-guzzler" taxes to be imposed as manufacturers' excise taxes on automobiles failing to achieve a minimum level of fuel efficiency. There is a modest provision for government funded R&D.

Responsibility: The Dept. of Transportation has the discretion to set standards for 1981-1984. Flexibility is promoted because standards are based on the average performance of a manufacturer's fleet, and need not be met by each vehicle. Compliance to the regulations is entirely the responsibility of the car producers.

Enforcement: Civil penalties start at $5. per car for every 1/10th mpg deviation from the applicable fuel economy standards. Waivers for penalties to other regulations are available to individual manufacturers upon application (15 USC *2008(b)(3)(C)). The Dept. of Transportation is ordered to police the requirement of a 55 mph speed limit by cutting off Federal highway funds to States with lax enforcement programs.

Evaluation: There are difficulties in adjusting product offerings as production design, engineering and production can require four or more years. Fuel economy effects seem to be linked to a sharp rise in fuel prices (Crandall, 1986, p.124). Fuel economy has been largely irrelevant until recently. Current regulation tends to increase the price of large cars and decrease or even subsidize the price of small cars. The gas guzzler tax constitutes a luxury tax on expensive cars and creates only a small amount of revenue. It is mainly to be considered a nuisance (Crandall, p.158). Cutting off highway funds has never been used, despite considerable evidence of frequent violations of the 55 mph speed limit.

References: Crandall, Robert, et al. Regulating the Automobile. Washington, Brookings Institution, 1986. Richard B. Stewart. "Regulation, Innovation, and Administrative Law: A Conceptual Framework" California Law Review Vol. 69, No. 5, September, 1981. pp.1263-1377.

Code: US-X-a-2

Country: US

Type of Regulation: Safety

Name of Agency: National Highway Traffic Safety Administration (NHTSA)

Program Title: Standard Setting

Initiation and Termination Dates: n/a

Relevant Legislation: National Traffic and Motor Vehicle Act (15 USC 1381 et. seq. 1392-1400).

Purpose: To regulate the industry's behavior by setting standards.

Procedure to Achieve Compliance: There are five stages: (1) an initial agenda and preliminary standard is set using existing precedents and existing related regulations to shape proposals; (2) detailed information is obtained (this can be difficult if the industry resists cooperation); (3) a basic standard is formulated and published in FR for review and comment; (4) bargaining begins over proposed modifications, the possibility of a future court review requires extensive record keeping (possible parties which may be involved include the auto industry and its suppliers, consumer groups, members of Congress and NHTSA); (5) at this stage the final standard is implemented.

Responsibility: The process is open to judicial review.

Enforcement: There is a test to determine compliance. If non-compliance exists possible sanctions include: withdrawal of licence, civil fines, adverse publicity and the possibility of criminal sanctions. The Court, not the agency is most likely to determine and enforce sanctions.

Evaluation: Notice and comment rule-making is a trial-and-error approach which encourages adversity. Cost-benefit analyses are often prepared to support decisions already reached rather than to help determine future decisions. There is a difficulty in developing fair, objective testing for compliance that will withstand court challenges. There is heavy reliance on voluntary standards to enhance promulgated standards. The process of standard setting is time-consuming and there are difficulties in information gathering and in enforcement. There are also anti-competitive effects and the judicial review process encourages a relative immunity of standards to revisions.

References: Stephen Breyer. Regulation and Its Reform. Cambridge: Harvard University Press. 1982. Chapter 5.

Code:US-X-a-3

Country: US

Type of Regulation: Energy

Name of Agency: Federal Power Commission (FPC)

Program Title: Standard Setting

Initiation and Termination Dates: April 1971

Relevant Legislation: National Gas Act, 15 USC 717 et seq. (1976) Order 431 (45 FPC 570, 15 April 1971) (717a(?))

Purpose: To regulate industry behavior by setting quantitative standards of provision.

Procedure to Achieve Compliance: To specify acceptable curtailment procedures for reducing service provisions and by setting service priorities.

Responsibility: as above

Enforcement: Through the approval or disapproval of curtailment plans. Through assessing penalties and fines.

Evaluation: The program priorities do not respond to social priorities. There are too many exemptions to apply a general system. There are problems in standard setting due to a lack of information. Enforcement problems arose out of the difficulty of verifying the information provided and through the lack of FPC authority over distribution companies to follow the end-use plan. There are physical difficulties in closing lines because when a gas connection is closed the pilot light is extinquished and must be relit before the gas can be sent through again. This means there must be physical supervision of the closing and re-opening procedure. The standard setting process did not lead to a sensible method of allocating scarce resources.

References: Stephen Breyer. Regulation and Its Reform. Cambridge: Harvard University Press. 1982. Chapter 13.

Code: US-X-a-4

Country: US

Type of Regulation: Energy

Name of Agency: Federal Power Commission (FPC)

Program Title: Price Setting

Initiation and Termination Dates: 1954-1978

Relevant Legislation: Natural Gas Act, 15 USC 717 et seq. (1976); 717(c)-(e); 717(l)-(u)

Purpose: To regulate the industry's behavior by setting prices. To administer rent control.

Procedure to Achieve Compliance: Between 1954-1960, the FPC used a case-by-case, cost-of-service, rate-making approach. In 1960 the FPC moved to an area-wide approach and set maximum rates for each field. Hearings were held to determine the final reasonable prices and a tiered pricing system for different vintages was instituted.

Responsibility: The Natural Gas Act gave the FPC the authority to regulate the price of natural gas when it was sold interstate or used for resale. This was designed to overcome the fact that State regulators, with the power to regulate local distributing companies, lacked the authority to regulate the prices at which large interstate pipelines (with monopoly power) sold to them. In 1954 the Supreme Court decided that the FPC also had the authority to regulate the prices at which field producers sold gas to the pipelines. A move to enact legislation to remove this power was defeated and the FPC began to regulate prices.

Enforcement: Through court proceedings.

Evaluation: Price setting encourages the development of gas shortages as producers try to increase the price at which they may market gas. There is some difficulty in determining the right price, at first the Commission set too low a ceiling on prices. Not only did this contribute to shortages but also created a situation where there were little incentives for producers to explore and develop new gas fields.

References: Stephen Breyer. Regulation and Its Reform. Cambridge: Harvard University Press. 1982. Chapter 13.

Code: US-X-a-5

Country: US

Type of Regulation: Safety

Name of Agency: Highway Traffic Safety Administration/ Dept. of Transportation

Program Title: Vehicle Safety Standards

Initiation and Termination Dates: 1966, amended 1970

Relevant Legislation: National Traffic and Motor Vehicle Safety Act, 1966 (15 USC, in particular Section 1392(a), 1398, 1410.

Purpose: To increase safety.

Procedure to Achieve Compliance: Performance standards are developed which require vehicles to meet minimum safety standards under various operating conditions. Safety was intended to be the predominant consideration in a calculus which also included cost, feasibility, and lead time. A showing of economic hardship or of engineering impossibility would qualify a manufacturer for a one-year extension of any deadline. The Secretary was also given discretionary power to grant a longer extension if the required changes could not be reasonably accomplished within one year (15 USC 1410). Among the most controversial issue is the passive restraint requirement: the choice is between seat belts or air bags. The Carter administration standard for passive restraint for new passenger cars was overturned in the US Court of Appeals and the Supreme Court. The Supreme Court decision criticized the Reagan administration both for failing to consider requiring air bags (given the dismissal of passive belts as cost ineffective) and for not providing sufficient grounds for rescinding a rule that had passed before NHTSA and the courts for fifteen years; the issue is unlikely to be resolved in the near future.

Responsibility: The Act instructed the Secretary to promulgate standards that were practicable (15 USC Section 1392(a)). NHTSA must be able to defend its standards on judicial review. The principal issue in mandating passive restraint involves usage rates and the cost of an alternative system.

Enforcement: The enforcement scheme is flexible with a maximum civil penalty of $400,000 for any related series of violations. Civil penalties can be adjusted to "the size of the business and the gravity of the violation" (15 USC 1398(b)).

Evaluation: The manufacturers have little incentive to invent new technologies and are in a position to question the feasibility of rules. For example, there are difficulties in enforcing tire safety because of the lack of technical know-how. This could be overcome by the hiring of a retired executive of a tire manufacturing company (Stewart, 1302).

The ambitous federal R&D program never materialized. The safety program is successful in achieving its goals in terms of highway fatalities, which would be greater by 40% without safety features enforced through regulation (Crandall, 1986, p.155) NHTSA is empowered to order recalls for vehicle defects that create serious safety problems. There is difficulty regarding passive belts as they may be disabled by owners. Air bags would be most effective, but also most expensive. Studies indicate that the relaxing of regulations could have significantly reduced car costs (as much as 6.9% of new car prices--Crandall, p.146).

References: Robert Crandall, et al. Regulating the Automobile. Washington, Brookings Institute, 1986. Lawrence White ,The Regulation of Air Pollutant Emissions from Motor Vehicles Washington, American Enterprise Institute, 1982. Richard B. Stewart "Regulation, Innovation, and Administrative Law: A Conceptual Framework", California Law Review Vol. 69, No. 5, Sept. 1981, pp. 1263-1377.

Code: US-X-a-6

Country: US

Type of Regulation: Environmental/Health

Name of Agency: Federal Aviation Authority (FAA)

Program Title: Standard Setting and Aircraft Noise Enforcement

Initiation and Termination Dates: 1 December, 1969

Relevant Legislation: Noise Control and Abatement Act. 42 USC 4904, 4910

Purpose: To assure compliance with noise standards; to stop the escalation of aircraft noise; to protect public health and welfare.

Procedure to Achieve Compliance: To control noise at its source through certification procedures. FAA's chief regulations for aircraft noise are known as Part 36 standards. In November, 1969, the FAA established maximum noise levels for newly designed aircraft heavier than 75,000 pounds. Standards were established for takeoff, approach, and sideline noise. In 1973, the FAA extended Part 36 noise limits to newly manufactured aircraft of pre-1969 designs. In 1976, jet aircraft already in service were required to meet the Part 36 standard, either by retrofit or by replacement. There is a phased timetable for compliance. In March, 1977, stricter requirements were issued for the next generation of commercial aircraft. In November, 1979, the FAA announced an extended timetable for retrofitting of planes having two or three JT8D engines (44 FR 12021). In addition, the FAA modified operational procedures to reduce noise. Modifications included: clearing aircraft only from the highest possible altitude; controlling airport development; and use of program funds for noise abatement devices and land acquisition.

In the Noise Control Act of 1972, Congress amended the Act to add protection to the public health and welfare to the original statement of purpose. It also gives the EPA a role in aircraft noise abatement by enabling it to propose rules. If the FAA does not adopt the EPA's proposal after a resonable time, it is obliged to publish an explanation in FR.

Responsibility: The FAA was granted authority to regulate aircraft noise in the 1968 amendments of FAA. Standards were imposed which require full applications of noise reduction technology. The EPA has a role in noise abatement under the public health and welfare clause. The FAA retains ultimate responsibility for regulating aircraft noise. Primary responsibility for control rests with State and local governments. Federal government pre-emption constrains State and local control; land use control is a major tool left to State and local governments. (The California Noise Act of 1969 directs the

Dept. of Transportation to adopt ambient noise-standards for airports operating under State permits). State regulations require airports to achieve a gradual reduction in noise exposure.

Enforcement: Aircraft not meeting standards would be denied a certificate of airworthiness.

Evaluation: Extending Standard 36 to the existing fleet has been most controversial. The argument is that benefits are not commensurate with costs, the compliance schedule was considered impossible, and the requirement would compromise fuel economy and safety objectives.

References: Thomas C. Schelling. Incentives for Environmental Protection. Cambridge: MIT Press, 1983. Chapter 3.

Code: US-X-a-7

Country: US

Type of Regulation: Trade Settlements

Name of Agency or Department: Federal Trade Commission (FTC)

Program Title: Informal Dispute Settlement and Consent Orders/Agreement

Initiation and Termination Dates: 1976

Relevant Legislation: Federal Trade Commission Act. Sect 5, Sect. 19(b); 15 USC P45 c 1976.

Purpose: To prevent businesses from pursuing unfair or deceptive trade practices by using consent orders.

Procedure to Achieve Compliance: After the Commission issues a complaint, a hearing is held. After a practice is deemed unfair, the Commission seeks Consumer Redress (Section 19). The Commission may commence civil action, issue a desist order, and obtain consumer relief through the courts. There is also the option to forgo litigation and favour a settlement agreement. If mediation fails, there is an arrangement for binding arbitration. The established arbitration program provides for arbitrators drawn from the Better Business Bureau and for a 60-day public comment period. The arbitrator renders a decision within 10 days, reflecting consumer perceptions of fairness. A relief order may include, and is not limited to, rescission or reformation of contracts, refund of money or return of property, and payment of damages and public notification.

Responsibility: An FTC decision is reviewable by the US Court of Appeals. The decision to use arbitration is reviewable by the US Court of Appeals as well.

Enforcement: Consent agreements require the parties to forego litigation.

Evaluation: The General Motors consent agreement with FTC is considered to be an example of the best alternative by which the Commission may obtain redress for consumers. Litigation would have taken 5-10 years. While the settlement is not perfect, it provides the immediacy of relief as General Motors refused to participate in any direct redress program. It is questionable whether individual arbitration would be as useful when a class of people complains. Critics stress that the lengthiness of the procedure requires consumer perseverance.

An official indicates that suits can be brought for up to $10,000, plus injunctions or consumer redress. These are combined in order to get redress for consumers. Judgements for civil penalties can be reduced by consumer redress or by the establishment of a redress fund. There are tax advantages to this last route, since measures for redress provide the company with partial tax relief (a business expense), whereas civil penalties cannot be treated as business expenses. Tying civil penalties together with redress gives the companies an incentive to locate those who have been harmed. In the case of the oil and gas industry, the redress fund was $10 million.

References: Administrative Conference of the US Sourcebook, "Federal Agency Use of ADR", 1987; pp. 636-641.

Code: US-X-a-8

Country: US

Type of Regulation: Trade

Name of Agency or Department: Federal Trade Commission (FTC)

Program Title: Consent Orders - Corporate Restructuring

Initiation and Termination Dates: 1976

Relevant Legislation: Federal Trade Commission Act Sect. 5. 15 USC P45 (1976) l

Purpose: To provide consent orders including internal corporate restructuring to forestall future violation.

Procedure to Achieve Compliance: The consent orders are designed to provide managerial remedies and to order an improved system of information handling. They create a separate management level position to receive and transfer customer feedback and to transfer executing duties to specific individuals. Examples when used: with a basement water proofing, aircraft, foamed plastics and mobile homes.

Responsibility: Negotiation of consent orders between the FTC and corporations. The FTC exercises full authority in drafting consent orders.

Enforcement: The consent order is implemented within a defined time frame. If there is continuous non-compliance, the FTC or the Corporation retreat to an adversarial route.

Evaluation: The results have been less than dramatic though there is increased governmental responsiveness to industry problems and there has been effectiveness in creating public consciousness about disputes. A modification in behavior has been indicated, yet these changes have been stimulated by factors other than consent orders such as state statutes, industry practices and competition. Corporations are not always cooperative with compliance efforts. The judicial route brings a retreat to adversarial positions and results in high costs to the FTC given the length of these judicial investigations.

References: Solomon, Lewis and Nancy Stein Nowak; Managerial Restructuring: Prospects for a New Regulatory Tool, The Notre Dame Lawyer; October 1980, Vol. 56, pp. 120-140.

Code: US-X-a-9

Country: US

Type of Regulation: Fair Trade

Name of Agency or Department: Securities and Exchange Commission (SEC)

Program Title: Uniform Code of Arbitration: Oversight of Self-Regulatory Organizations

Initiation and Termination Dates: 1977

Relevant Legislation: Securities Reform Act, 15 USC 78s(c)

Purpose: To ensure the fair administration of trade-related disputes involving self-regulated organizations.

Procedure to Achieve Compliance: Self-Regulatory Organizations (SRO) set rules for fair trade and handle disputes. The SEC receives notice of all SRO disciplinary actions and oversees the conduct of SROs, as for example, in the case of broker-dealer and customer. The SROs have drafted a uniform code of arbitration adopted by all members and approved by the SEC in 1977. For cases under $2,500, the person with the claim commences the process by filing a claim letter, a submission agreement (to submit to the arbitration decision), and a $15 deposit with the Director of Arbitrations at the SRO. The directory notifies the respondent of the claim and allows 20 days in which an answer or counter claim may be filed. The Director selects an arbitrator to hear the dispute, make a decision, or grant an award.

Responsibility: The Securities and Exchange Commission is empowered to abrogate, add to, or delete from the rules of an SRO: in addition to this, the SEC oversees the conduct of SROs. Although the emphasis is on self-regulation, the power of the SEC is sanctioned in the SEC Reform Act.

Enforcement: The SEC can deny membership or participation in SROs as well as review the denial of membership in SROs. The SEC may suspend, revoke, censure or impose limitations on the activity of SROs. Arbitration decisons between brokers/dealers and customers are not enforceable with respect to federal securities laws. The SEC initiates procedures, yet defers governmental action when SROs undertake to institute the program themselves (See also--auto-defect).

Evaluation: no information available

Reference: Sourcebook: "Federal Agency Use of Alternative Means of Dispute Resolution" Appendix III pp.631-633.

Code:US-X-a-11

Country: US

Type of Regulation: Trade

Name of Agency: Federal Trade Commission (FTC)/ Bureau of Competition/ Antitrust Division of the Justice Dept.

Program Title: Antitrust/Mergers

Initiation and Termination Dates: n/a

Relevant Legislation: Sherman Antitrust Act, (1888) Section 1; Clayton Act, (1914) Section 7.

Purpose: To prohibit the formation of trusts and contracts in restraint of trade or commerce.

Procedure To Achieve Compliance: Antitrust cases originate from public complaints or from studies of industries. Particular industries, such as oil, steel and automobiles, are monitored. Once a complaint is made, the case is examined by staff using data supplied by the firms involved. Negotiations of consent decrees are done by the Justice Department while consent orders are processed by the FTC. Defendants agree to abide by the order negotiated but are not required to acknowledge that they violated the law.

If the case is not settled, the process of "discovery" is entered whereby relevant documents are subpoenaed and examined. A trial serves to find facts and to allow the hearing of testimony and documents. In the case of the FTC, a trial examiner (an Administrative Law Judge) writes a proposed decision while the commission then makes a final decision.

Responsibility: A complaint must be signed by the Assistant Attorney General for Antitrust as well as by the Attorney General. District Courts are trial courts for the Justice Department, while Administrative Law Judges act on behalf of the FTC. Appeals are heard in the Court of Appeals.

Enforcement: Through consent decrees or orders; through the issuance of a complaint in criminal cases giving times and details of relief orders. The maximum penalty for a criminal antitrust offense is $1,000,000 for each corporate offender and $50,000 for each individual. These penalties are rarely used and fines rendered are ususally far below these sums. The FTC may seek a preliminary injuction preventing any merger and court injunctions also figure in Justice Department cases.

Evaluation: A fair number of complaints are turned down by the Assistant Attorney General on the basis of economic or legal grounds. Unscrambling inter-connections is extremely difficult and often a firm will respond merely by selling off some of its least profitable properties. In addition, large cases to achieve dissolution have been unsuccessful due to the problem of the dominant position of the defendant in the market. Hearings are lengthy, expensive, and take too long.

References: Leonard W. Weiss; Ally D. Strickland. Regulations: A Case Approach. New York, McGraw Hill, 1974.

Code:US-X-a-12

Country: US

Type of Regulation: Commerce

Name of Agency: International Trade Administration (ITA), Export Administration

Program Title: n/a

Initiation and Termination Dates: 1979

Relevant Legislation: Export Administration Act of 1979 (EAA) Amendments 1985; Export Administration Regulation 15 CFR *368-399

Purpose: To safeguard the national interest. To secure that exports are in compliance with national security objectives, foreign policy and short-supply regulations.

Procedure To Achieve Compliance: Through licensing of exports from the US Export administration regulation. Through the issuance of temporary denial orders (TDO). Amendments limit the authority of the export administration to issue TDOs, temporarily denying export privileges in situations where an imminent violation of the EAA is expected. Amendments provide that TDOs expire 60 days after issuance unless there is a renewal.

Responsibility: The Export Enforcement (EE) department within the ITA administers and enforces export laws.

Enforcement: Through temporary denial orders. Property or technologies being exported may be seized if they are in violation of the EAA.

Evaluation: Documentation is needed in order to show an imminent violation, this documentation is often not available in time to prevent the violation. The need to renew TDOs every 60 days is unduly burdensome. There is a submission for a draft bill to replace imminent violation with the need to issue TDO "to permit or facilitate enforcement" of the EE and that would extend the effective period to 180 days. There has been a failure to give the EA the authority to dispose of seized property through forfeiture. A bill has been drafted to require the US Customs Service to take and dispose of property seized by the EE.

References: Executive Office of the President. Office of Management and Budget. Regulatory Program of the United States Government, April 1, 1987-March 31, 1988, Washington. pp.38-39.

Code: US-X-a-13

Country: US

Type of Regulation: Commerce

Name of Agency: National Marine Fisheries Service (NMFS)

Program Title: Fishery Management Plans (FMP)

Initiation and Termination Date: n/a

Relevant Legislation: Magnuson Fishery Conservation and Management Act, 1978

Purpose: To conserve and manage fishery resources.

Procedures to Achieve Compliance: Through the development of management plans, including fish quotas, staggering fishing seasons, limiting gear types, and through seasonal and area closures to protect spawning stocks. The "Operational Guidelines--FMP Process" divides the procedure into 5 phases: 1) planning; 2) development of draft documents; 3) public reviews; 4) final FMP reviews and approval; and 5) continuing and contingency fishery management.

The Secretary can change management measures without formally amending the management plan. Fishery Councils provide a forum for public debate to examine the efficiency of plans. The plan, with draft implementing regulation, final environmental impact statement/assessment, and draft regulatory impact review, is submitted to the Secretary for review against the national standards contained in the Magnuson Act.

The same process applies to amending an existing approved plan. Review time begins on the date the application is received and on the 15th day the proposed regulations must be filed for publication with the Office of the Federal Register. If the submission is not structurally complete, the Secretary must immediately disapprove the application and return the FMP. On the 60th day, the public comment period ends and on the 95th day an FMP or amendment is effective automatically, unless disapproved, and the Council is so notified. On the 110th day, the final rule must be filed for publication in FR.

The Act contains seven national standards against which FMPs are judged: the maximum catch must be yielded without over-fishing; the best scientific information available in management measures must be incorporated; individual stocks must be managed in units; measures of allocations should be fair; efficiency must be promoted; variations must be taken into account; and costs must be minimized. The Secretary has supplemented these standards with guidelines that set forth his interpretation of each standard. The implementation must be proposed on the Federal Register.

If the Secretary determines that an FMP or amendment is not consistent with the Act, he may disapprove or partially disapprove it. Any parts of an FMP or amendment that are not disapproved must be implemented by the issuance of a final rule. FMPs and amendments are monitored by Councils to determine their effectiveness and to discover problems.

Responsibility: There are eight regional Fishery Management Councils (FMC) responsible for preparing FMPs and their implementation for each fishery in need of management. The Secretary will not approve measures which are submitted by a Council unless the fishery is in need of management.

Enforcement: n/a

Evaluation: The Secretary has very little time to review submitted FMPs or their amendments. Only certain specified factors may be considered before publication in FR. Rule-makings cannot be precisely scheduled in advance. For the most part, the Secretary's responsibility to propose council-submitted implementation regulations is non-discretionary.

References: Executive Office of the President. Office of Management and Budget. Regulatory Program of the United States Government, April 1, 1987 - March 31, 1988, Washington. pp. 40-41; 51-53.

Code: US-X-b-1

Country: US

Type of Regulation: Trade

Name of Agency or Department: Commodities Futures Trading Commission (CFTC)

Program Title: Reparations Procedure

Initiation and Termination Dates: 1976; Amended 1982; in force 1984

Relevant Legislation: Commodity Exchange Act Publ. L 93-463; Publ. L 97-444, 96 Stat. 2308; USC P18(b).

Purpose: To provide for the efficient and expeditious administration of reparation claims through the reparations procedure.

Procedure to Achieve Compliance: The CFTC sets rules through a 3-track decision-making process:

a) provision of a voluntary decisional procedure similar to commercial arbitration;

b) an additional summary decisional procedure for claims up to $10,000; and

c) a formal decisional procedure for claims exceeding $10,000.

An injured person may file a complaint with CFTC if the injury is a result of a registrant's violation. The CFTC reviews the complaint and the registrant files an answer within 45 days. Upon election of proceeding and the appointment of the judgement officer, motions are heard on the basis of written submission. CFTC enters the fact finding, conclusion of law and reparations award. The decision contains an award of damages. A default order becomes a final order in 30 days. Procedures under b) and c) are more detailed.

Responsibility: The CFTC has been granted the power to promulgate rules, regulations, and orders necessary to provide for efficient and expeditious administration of reparation claims. The proceedings officer's decision may be appealed to the CFTC.

Enforcement: The CFTC issues the reparations rules. In the 1st year of amendments there were 441 complaints and the number is increasing. Of these 125 were forwarded for hearing; 254 remain pending in Office of Proceeding; and 62 were terminated through settlement, 28 of which for the complainants failure to correct deficiencies or because the claim was barred.

For (a) The Judgements Officer's final decision cannot be appealed either to the Commission or the court. The decision may be enforced in US District Court. The Commission may review the award.
For (b) The judgement is an initial decison that may be appealed to the Commission. After 30 days this becomes a final decision.
For (c) The initial decision is appealable to an administrative law judge who makes a trial decision unless appealed to the commission or reviewed by the commission.

References: In Administrative Conference Sourcebook: "Federal Agency Use of ADR", pp. 605-609. see also article by Harter, in Sourcebook, pp. 309-349.

Code: US-X-b-2

Country: US

Type of Regulation: Pension Benefits - Arbitration

Name of Agency or Department: Pension Benefit Guarantee Corp. (PBGC)

Program Title: Arbitration Rules

Initiation and Termination Dates: 26 September, 1985

Relevant Legislation: Multi-employers Pension Plan Amendments Act (MPPAA)

Purpose: To create withdrawal liability to prevent withdrawal from the plan. Leaving the plan results in payment from a reduced pension fund pool.

Procedure to Achieve Compliance: To impose liability upon an employer withdrawing from multi-employer pension plan, the MPPAA requires pension plan sponsors and withdrawing employers to arbitrate disputes of the amount of an employer's withdrawal liability. As originally enacted, employers were permitted to withdraw free of future liability as long as the plan did not terminate within 5 years of withdrawal. MPPAA requires plan sponsors to determine the extent of withdrawal liability (219 USC *1381-1399). Any dispute that arises is resolved through arbitration. PBGC published rules 27 August, 1985. Either party may initiate arbitration. The rules do not paraphrase the statutory presumptions that the arbitrator must make as set forth in Sect. 4221(a)(3) of the Act. The arbitrator may call a preliminary hearing. The arbitration hearing must take place no later than 50 days after the arbitrator accepts the appointment. There must be a stenographic or typed record of the proceedings. The final award must include factual and legal bases for the decision; adjustments for amounts; schedule of payments and provision or allocation of costs.

Responsibility: The arbitrator's power, with few exceptions is the same as Title 9 under the U.S. Code. The arbitrator has discretion as to admissibility of evidence. Further, a written award must be made within 30 days of the close of proceedings. The award is reviewable in U.S. District Courts.

Enforcement: Compulsory arbitration.

Evaluation: The powers to use judicial review of results of this progam are ambiguous, because binding arbitration generally limits a judicial review. There has, as yet, been no judicial review of decisions taken under the 1985 rules.

References: MPPAA 29 USC 1381, especially P1401. Rules: 50 FR 34683, August 27, 1985.

Code: US-X-b-3

Country: US

Type of Regulation: Health, Education, Welfare

Name of Agency or Department: Department of Health and Human Services (HHS)

Program Title: Grant-in-Aid Program for Mediation

Initiation and Termination Dates: 1979

Relevant Legislation: CFR *16.18 FR 43820-21 (1981)

Purpose: To settle disputes through mediation.

Procedure to Achieve Compliance: Grantees under the Program have the right to appeal the final decisions of HHS Department. The Contract Appeals Board, upon the basis of written submissions, supplemented in some cases by hearings, renders written decisions. If the Board decides that mediation would be useful, it may require mediation and assist in selecting a mediator. In 1981, rule-making was proposed. The mediator was selected from its own staff.

Responsibility: Contract Appeals Board

Enforcement: Mediation results of the Contract Appeals Board are not binding on parties unless both parties agree in writing.

Evaluation: This procedure is successful when the issue is primarily one of fact, not of law (legal dispute). There is no suggestion that granting agencies have related rules. Of 7 cases: 5 settled; 1 failed; and 1 settled in part.

References: In US ADR Sourcebook, 1987: Article by John Barrett, pp. 527-530. 45 CFR *16.18; 46 FR 43820-21 (1981).

Code: US-X-b-4

Country: US

Type of Regulation: General

Name of Agency: Administrative Conference of US

Program Title: Administrative Rule-Making

Initiation and Termination Dates: 15 July, 1982

Relevant Legislation: FR July 15, 1982

Purpose: To reach a mutually acceptable resolution of the issue in dispute.

Procedure to achieve compliance: The Administrative Conference of the US recommended that representatives of the major interests affected by a proposed regulation meet jointly with the senior officials of the appropriate government agency in a structured attempt to reach an agreement on the language of the proposed rule. If an agreement were reached, the agency would be expected to publish it in the Federal Register as a notice of proposed rule-making unless there were good causes for not doing so. The proposed rule would then go through normal notice and comment procedures.

Responsibility: The regulatory agency asks an independent mediator to convene the negotiations by identifying potential parties, key issues, and concerns that would affect ground rules. Comments are solicited about the process. Often representatives or parties are required to obtain ratification of the agreement by the groups they represent.

Enforcement: None

Evaluation: As of mid 1985, three federal agencies: US Department of Transportation; EPA; and OSHA, had used the approach, and the FTC was in the process of starting its first negotiated rule making effort. Once parties agree to negotiate they usually reach an agreement. Of the 103 cases where agreement was reached, 29% have no known implementation results, while 71 cases have results. From these cases, 70% involved a fully implemented agreement, 14% had a partially implemented agreement, and in 15% the agreement was not implemented. There was more success in site specific cases than in policy cases. Sometimes there were difficulties in implementing agreements because unrepresented parties were left out. Citizen representation remains a problem. By mid 1985, of 161 cases studied, 78% had reached an agreement and 22% had not. There is some question of whether agreements are of public importance, as agreements concern procedural issues and issues relating to a reasonable deadline.

Reference: Bingham, Gail: Resolving Environmental Dispustes: A Decade of Experience; Conservation Foundation, 1986; pp.55-58.; plus Chapters 3 and 4.

Code US-X-b-5

Country: US

Type of Regulation: Defense - Contract Appeals

Name of Agency or Department: Navy

Program Title: Alternate Dispute Resolution Program (ADR)

Initiation and Termination Dates: December 23, 1986

Relevant Legislation: Armed Services Board of Contract Appeals. ADR Program, See Administrative Conference Sourcebook, pp. 847-852.

Purpose: To resolve contract disputes.

Procedure to Achieve Complicance: It requires the approval of the General Counsel to proceed with an ADR. Each party in the mini-trial is given a specific amount of time to present their position before the principals or the senior contracting officials. There is then a minimal hearing. A neutral advisor is present to preside over the proceeding and to facilitate settlement. Post-hearing discussions should not be used in subsequent litigation. As principals discuss their respective positions and possible resolutions or compromises, the negotiation is confidential.

Responsibility: Principals should not have the responsiblity to prepare or deny claim.

Enforcement: There has been no enforcement as yet given that of three cases, two were settled through the use of the mini-trial and in the third case the issues were narrowed for trial.

Evaluation: None available

Reference: Administrative Conference of the US. Sourcebook: Federal Agency Use of ADR, pp. 589-590 and 847-852.

Code: US-X-b-6

Country: US

Type of Regulation: Defense-Contract Appeals

Name of Agency: US Army Corps of Engineers

Program Title: Mini-Trial

Initiation and Termination Date: 1985-ongoing

Relevant Legislation: Contract Disputes Act of 1978

Purpose: Primarily to circumvent the lengthy process of going through the Board of Contract Appeals. To develop a quicker and less costly method of conflict resolution and to ensure the fulfillment of contracts.

Procedure to Achieve Compliance: Through a structured negotiation process, agreement is achieved through a voluntary, expedited, non-judicial process where top management officials of each party meet to resolve a dispute. There are no third parties involved. Over a short time period an informal hearing is held where non-binding discussion can take place. The use of a neutral advisor is optional. Settlement involves awarding compensation to a specific organization and any other necessary arrangement.

Responsibility: US Army Corps and contractor through the decision of top management.

Enforcement: Voluntary settlement for compensation and other arrangements.

Evaluation: The obstacles to the use of this procedure include: conflict with statutory procedures; the tendency of bureaucrats to "follow the book"; and its rigid chain of command and approval. The approach has been used twice and has been found to be most successful in cases involving highly complex factual disputes where there is a willingness on both sides to settle. In both cases settlement was achieved. Yet, disgruntled regional personnel charged the Corps representative with incompetence, which prompted an investigation by the Inspector General. The problem is that while top management supports this approach, there is internal resistance at the operating level.

References: Administrative Conference of US. Sourcebook of ADR, 1987; pp. 703-730, text of circular. Articles: (all in Sourcebook of ADR) Korthals-Altes, pp. 147-161; Edelman, Carr, pp. 231-238; Hartes, pp. 240-246 and 250-252; ABA, pp. 253-306; pp. 581-583.

Code: US-X-b-7

Country: US

Type of Regulation: Defense-Contract Dispute-NASA

Name of Agency: NASA

Program Title: Mini-Trial

Initiation and Termination Date: 1982

Relevant Legislation: NASA Circular

Purpose: To conclude a settlement of contract disputes.

Procedure to Achieve Compliance: Both sides agree to present their case in summary form to a panel composed of senior officials from each side. Subsequently, the panel does not render a decision but rates comments on the strengths and the weaknesses of each presentation in order to help each side evaluate their position and to conclude a settlement. There is, as yet, no written agreement of procedures. There is an exchange of written briefs of technical, cost, and legal issues. In this case two days of hearings led to a solution.

Responsibility: NASA and the contractor.

Enforcement: To conclude with a mutually beneficial solution or settlement, which is non-binding.

Evaluation: This procedure resulted in a settlement and has saved about $1 million in legal costs. As yet, there is no reference as to the general success of this procedure.

Reference: In Administrative Conference of the US Sourcebook: Federal Agency use of ADR; 1987, pp. 573-576. See article, Hefter, in Sourcebook ADR, pp.247-250 and ABA, in Sourcebook ADR, pp.253-306.

Code: US-X-b-8

Country: US

Type of Regulation: Trade - Written Warranties

Name of Agency or Department: Federal Trade Commission (FTC)

Program Title: Informal Dispute Settlement Procedure Rule (FR 60190 (1975))

Initiation and Termination Dates: 1975

Relevant Legislation: Magnuson-Moss Warranty Act; 15 USC •2301-2310, in particular 2310 (a) (l)-(3).

Purpose: Authorizes an informal dispute resolution procedure in order to facilitate the fair and expeditious settlement of consumer warranty disputes.

Procedure to Achieve Compliance: The Act establishes that the warrantor must inform the consumer of the warranty mechanism, including provision of a notice of name, address and a toll free telephone number. The warrantor cannot charge a customer a fee for the use of this mechanism. The procedure set in 16 CFR 703.5 requires that the notification of complaint be filed with the warranty mechanism. Information is gathered and organized; oral presentations may be allowed. A decision must be issued within 40 days of the receipt of a complaint. The performance of involved parties is monitored. Statistics are kept on the number of disputes resolved and the degree of warrantor compliance. The decision issued is non-binding.

Responsibility: The Dispute Resolution Mediation operates as part of a private organization. The Act directs the Federal Trade Commission to issue rules prescribing the minimum requirements for informal dispute resolution (Rules appear at 15CFR Sect. 703). The Commission is authorized to review these mechanisms, however, and this authority is not intended to preclude the courts from "viewing the fairness and compliance with FTC rules or such procedures." The mechanism must function independently from a warrantor's control or influence.

Enforcement: This is a voluntary procedure. While the decision reached is not binding, it is admissible in court and may, in fact, be a prerequisite to proceeding with a law suit.

Evaluation: no data available

References: Administrative Conference of the US Sourcebook, "Federal Agency Use of ADR", 1987, pp. 633-636.

Code: US-X-b-9

Country: US

Type of Regulation: Trade Settlements

Name of Agency or Department: Federal Trade Commission (FTC)

Program Title: (Fast Trade Rule) for Administrative Law Judges (ALJ)

Initiation and Termination Dates: 12, November, 1985

Relevant Legislation: Rules of Practice and Procedure of the FTC Sect.3.21

Purpose: To increase the pace of proceedings before the FTC through the establishment of a deadline for the preparation of cases to be heard before it. To improve case management.

Procedure to Achieve Compliance: There is a 6 month deadline for the preparation of cases before an ALJ (Administrative Law Judge). The ALJ must set a trial date within 2 weeks of the mandatory scheduling conference. The rule requires that parties exchange non-binding statements, claims and defenses before the scheduling conference which must be held not later than 10 days after filing the first non-binding statement.

Responsibility: The ALJ can impose sanctions for non-compliance with the 6 month deadline.

Enforcement: Through the court decision of the ALJ.

Evaluation: Lawyers opposing the rule argue that FTC attorneys have an unfair advantage in preparing for hearings before an ALJ. However, before this change, the process in question had been a lengthy one because the parties were not required to proceed within a specific time frame.

References: US Administrative Conference ADR Sourcebook, pp.647-650.

Code: US-X-b-10

Country: US

Type of Regulation: Broadcasting

Name of Agency or Department: Federal Communications Commission (FCC)

Program Title: Alternative Dispute Resolution Techniques (ADR)

Initiation and Termination Dates: not known

Relevant Legislation: (case example)

Purpose: To settle various charges of wrongdoing involving the company RKO, through the use of mediation.

Procedure to Achieve Compliance: Under 47 ASC P309e, the FCC may conduct paper hearings in situation where there are competing applicants for low power television service. The rules of practice governing these hearings are found at 47 CFR Pl.241a. The Commission may conduct expedited hearings involving basic qualifying issues for competing applicants for cellular radio service facilitites. The FCC reports that this procedure basically involves strict adherence to a hearing schedule already prescribed by the rules; the rules governing this expedited hearing are found in 47 CFR PP22.916 and 22.917. In the RKO case a settlement proceeding order commenced after 9 years of unsuccessful litigation.

Responsibility: The mediator; the FCC to issue licences.

Enforcement: In the RKO case the result was a binding settlement.

Evaluation: Lengthy negotiations had not resulted in a settlement. There was a requirement to expedite the process.

References: Administrative Conference of the US Sourcebook, "Federal Agency Use of ADR"3, pp.531-570. Survey in Sourcebook, pp.499-500.

Code: US-X-c-1

Country: US

Type of Regulation: Deregulation

Name of Agency: Office of Management and Budget (OMB)/ Office of Information and Regulatory Affairs (OIRA)

Program Title: Cost-Benefit Test and other 'Burden Reducing Measures'

Initiation and Termination Dates: Feb 17, 1981

Relevant Legislation: Executive Order 12291

Purpose: To reduce the burden on employers.

Procedure to Achieve Compliance: Proposed major rules must be submitted to OMB's director 60 days before publication in FR and final major rules 30 days before publication in FR; all non-major rules must be submitted at least 10 days in advance. OIRA passes judgement on the appropriateness of each proposed regulation at least twice before it becomes law. Executive Order 12291 requires OSHA, and other agencies, to submit Regulatory Impact Analysis (RIA) to OMB before proposing rules and before issuing a final rule. OBM has held up some rules for months until OBM criticisms had been satisfactorily answered. Each proposal has to pass a cost-benefit test. Citations should be 'settled' by reducing or eliminating penalties in return for an employers promise to abate the hazard and to comply with OSHA regulations.

Responsibility: OMB was established as a focal presidential oversight. OSHA encouraged officers to reduce their contested cases, which created budget constraint at OSHA and placed decisions in the hands of Congress and the President. EPA abolished its' enforcement office. OMB review and agency responses have not been made public, making it difficult to determine if OSHA's decisions have been altered by OBM review.

Enforcement: OMB is authorized to designate major rules for review and to establish schedules for the reviews and analyses. The order also required a review of existing major regulations to determine the extent to which they conform to standards elaborated in the directive.

Evaluation: Re: OSHA-There was an increase in work-related injuries from 7.6 to 8 per 100 workers. Fines were considered a 'minor inconvenience'. Field officers do not view penalties as an important part of enforcement and are too willing to settle. The rate of contested cases was reduced from 20% in 1980 to 2% in 1986. EPA-Abolished the enforcement office; asked the Department of Justice to drop 49 pending enforcement actions; reduced the number of cases referred to the Justice Department for prosecution from 200 to 30. During 1981 OMB sent 2,803 rules for review: 87% approved without change; 5% approved with minor changes; 3% returned to agency for major changes (often proxy for effective termination); and 2% were classified as major.

Reference: "Are Federal Regulators Falling Down on the Job" N.Y. Times; August 2, 1987 (Ellen's material) John Mendeloff, "Regulatory Reform and OSHA Policy" Journal of Policy Analysis and Management, Vol.5, No. 3, Spring, 1986, pp.440-468. OTA Preventing Illness and Injury in the Workplace Washingon, 1985, Chapter 1 George C. Eads; Michael Fix "Regulatory Policy" in The Reagan Experiment. ed. John L. Palmer and Isabel V. Sawhill, Washington, The Urban Institute, 1982. pp.129-153, esp. 139-140.

Code: US-X-c-2

Country: US

Type of Regulation: Prohibition through regulation

Name of Agency: U.S. Securities and Exchange Commission (SEC)

Program Title: Occupational Disqualification (Corporate Crime)

Initiation and Termination Dates: 1934

Relevant Legislation: Securities and Exchange Act, 1934
(Proposal)

Purpose: When incumbent management has demonstrated an unwillingness to obey securities regulation, civil penalties are enacted. These include: prohibition from serving as an employee, officer, director or board member in a brokerage, or dealer business. There is an avoidance of criminal penalties.

Procedure to Achieve Compliance: A consent order is issued pursuant to either administrative proceeding or court actions. The SEC intervenes when a prohibition or consent decree is violated. Decrees may be of long duration. A certificate is issued indicating that there is a loss of privileges and gives the duration and the reasons for the order.

Responsibility: SEC, Civil enforcement, Federal Courts.

Enforcement: Administrative penalties include being barred from jobs, loss of privileges, the imposition of costs through loss of work opportunities, suspension and revocation of registration. Between 1978-1985, there was a growth in temporary restraint orders. Other tools for enforcement include: probation, civil fines, freeze on assets and a requirement to file affidavits. Criminal penalties include fines and imprisonment. There have been increased meaningful sanctions, yet an avoidance of imprisonment.

Evaluation: n/a

References: SEC, Securities and Exchange Act, 15 USC 780(b)(4)(B) 1981. Mathews and Sullivan Criminal Liability for Violation of Federal Securities Laws, The National Commissions Proposed Federal Criminal Code, S.1 and S.1400. 11 AM Crim. L Rev. 928-929, v. 14 (1973).

Code: US-X-c-3

Country: US

Type of Regulation: Drug Administration

Name of Agency or Department: USDA/FSIS

Program Title: Inspection Program

Initiation and Termination Dates: data not available

Relevant Legislation: Federal Meat Inspection Act. Poultry Products Inspection Act 21USC P467c82 and 21 USC P671-674.

Purpose: To keep adulterated food from the marketplace.

Procedure to Achieve Compliance: Continuous daily inspection of meat and poultry slaughterhouses and processors. Products must have a stamp of approval before entering interstate commerce. Facility and construction plans must be reviewed and approved by the USDA. Voluntary product recalls may be requested; administrative detentions do not exceed 20 days. The Secretary may withdraw inspections when a plant has been found to produce adulterated products due to unsanitary plant conditions or where plant management fails to destroy condemned products. After the opportunity for a hearing is offered, a determination to withdraw inspections is final and conclusive.

Responsibility: To inspect food-processing facilities. There is also a statutory right to examine plant records and to recommend administrative remedies. The decision of inspection withdrawal is open to judicial review.

Enforcement: To provide for administrative decisions to withhold inspection, condemn or detain products; to require product recalls; to suspend or withdraw inspection in order to stop the plant from operating. Cases are litigated through the Department of Justice. Products may be detained in distribution for up to 20 days. Those not brought into compliance are subject to judicial seizure.

Evaluation: USDA rarely imposed inspection withdrawal to plants with substantial records of problems; there needs to be support from the FDA for enforcement. The requirement of USDA to have plants develop and carry out reliable control systems should be coupled with the authority to apply strong penalties unless test results can be made available within 24-48 hours. Contaminated food will continue to enter the market unless rapid screening tests within slaughter plants are implemented.

References: n/a

Code: US-X-c-4

Country: US

Type of Regulation: Food Safety

Name of Agency or Department: Food and Drug Administration (FDA)

Program Title: Inspection Program - Seizure/injunction

Initiation and Termination Dates: Amendments in effect 180 days after April 22, 1976

Relevant Legislation: (April 22, 1976) FFDCA 21 USC P 332 - 336 (1982)

Purpose: To provide sanctions to enforce safety standards. To outline education to promote compliance.

Procedure to Achieve Compliance: Through food inspections and intermittent plant inspections. Recalls of adulterated products are pursued voluntarily by food producers, sometimes at the request of the FDA. Minor violations result in a notice of adverse finding/warning. It is the policy to emphasize cooperative producer education and industry residue programs rather than to pursue sampling. A less official form is to circulate information letters. Seizures or detentions require locating the unlawful product. FDA does not provide for mandatory recalls of adulterated products; FDA encourages voluntary recalls by threatening court action.

Responsibiltiy: Judicial product seizures or injunctions, and criminal prosecutions must be pursued through the Department of Justice. The FDA inspects once every 5-6 years; 17% of food imports are inspected. No prior approval is required before the entry of food into interstate commerce. Food producers are not required to notify the FDA of their operations. There is little authority to examine plant records except in the case of infant formulas or pursuant to a warrant or court order.

Enforcement: Inspections can be witheld; product recalls can be required or a product can be detained for up to 20 days until the plant has been brought into compliance. Judicial seizure is also possible. Investigations usually only result in notices of adverse findings because of the number of violations which must be documented in order to build a criminal case. As a result, information letters are resorted to frequently. The choice of civil actions fall under: seizure or detention (Section 304); or, injunctions (Section 302). Criminal prosecution is the most severe and least common enforcement procedure (Section 303(a)) the maximum penalty under this procedure is 1 year in prison and a fine of $1,000. FDA enforcement authority for residues is too cumbersome and inspections are too infrequent.

Evaluation: Bonds are used ineffectively to regulate imports, and sanctions which are stronger than the Notice of Adverse Findings are unlikely to be used. There is an unwillingness to use available sanctions and a failure to link penalties with prior violations and to repeat offences. Firms are targetted based on their size and the degree to which their product poses a high risk. The FDA inspects only once every five or six years, and only 17% of the imports are inspected. There is also a lack of follow-up as shown by the fact that in 1973-1976 only 37% of firms with prior violations were inspected, while in 1979-1981 only 25% were re-inspected. Fewer than 50% of FSIS detected violations. Manufacturers are slow to accept residue programs as well.

References: US, General Accounting Office, Monitoring and Enforcing Food Safety - An Overview of Past Studies, 1983.

Code: US-X-c-5

Country: US

Type of Regulation: Taxation

Name of Agency or Department: Internal Revenue Service (IRS)

Program Title: Taxpayer Compliance Measurement Program

Initiation and Termination Dates: no dates available

Relevant Legislation: Tax law, no specification

Purpose: To reduce violations through auditing and the resulting punishment.

Procedure to Achieve Compliance: Consecutive auditing. The IRS does not recognize a difference between intentional and unintentional violations. In the case of gross violations there is a referral for criminal investigation.

Responsibility: The US Revenue Service audits tax files.

Enforcement: Civil penalties include: tax owed plus interest; a small additional fine. Criminal penalties include fines and imprisonment.

Evaluation: Consecutive auditing, with subsequent civil, or criminal penalties reduced violations among low income people, yet not among higher-income taxpayers. There were errors due to the complexity of the law. Most of the penalties assessed were as a result of negligence and there was found to be some civil fraud. Monitoring the behavior of people through auditing was not effective. Existing penalties are weak and ineffective.

References: Long, Susan and Richard Schwartz; The Impact of IRS Audits on Taxpayer Compliance: A Field Experiment in Specific Deterrence; Center for Tax Studies, School of Management; Syracruse University.

Code:US-X-c-6

Country: U.S.

Type of Regulation: Business Regulation

Name of Agency: Justice Department

Program Title: Occupational Disqualification

Initiation and Termination Dates: n/a

Relevant Legislation: Deposit Insurance Act, 1950 (12 USC Section 1829 1980)
Securities Exchange Act, 1934, (15 USC Section 780(b)(4)(B)(1981)

Purpose: To sanction misconduct of corporate executives; to deter illegality; to protect people at large and to fulfill society's demand for justice.

Procedure To Achieve Compliance: The Deposit Insurance Act prohibits persons convicted of any criminal offense involving dishonesty or breach of trust from serving as a director, officer, or employee in a federally insured bank. The Securities Exchange Act allows for the suspension or for the revocation of the registration of any broker or dealer convicted of a felony or misdemeanor.

Responsibility: The licensing authority issues or revokes licenses. Judges and legislators select a mix of criminal, civil, administrative and private remedies.

Enforcement: Federal Securities law enforcement actions (SEC) have imposed specific obligations on management and have constrained managerial discretion through the use of such procedures as providing court-appointed management and directors. In serious cases, federal courts have directly intervened to transfer decision-making authority from certain insiders through equitable remedies and civil consent decrees. The SEC, for example, has settled for court-appointed directors and the appointment of a special counsel whose duties were to investigate corporate affairs and bring civil actions against those persons indebted to the corporation because of their wrongdoing. Use of decrees to restructure management or relief management of various aspects of control through consent orders or prohibitions are other enforcement routes. Consent orders are issued pursuant to either administrative proceedings or court actions and may be narrowly or broadly fashioned. Prohibitions for a particular time or of specific duties are other remedies. Decrees may be imposed after administrative hearing, rendering a criminal trial unnecessary.

Evaluation: When used as part of a criminal sentence, disqualification represents an innovation in the traditional aims of the criminal law to deter, incapacitate, and punish offenders. Disqualification follows criminal proceedings, which have a higher standard of proof than civil actions, and thus provide safeguards such as indictment and trial by jury. Some observers (Farrand) have questioned the propriety of using civil enforcement provisions of laws such as the Securities Act to punish or deter.

References: Martin F. McDermott. "Occupational Disqualification of Corporate Executives: An Innovative Condition of Probation." The Journal of Criminal Law and Criminology, Vol. 73, No. 2, 1982. M. Clinard, P. Yaeger. Corporate Crime, 1980. Farrand. "Ancillary Remedies in SEC Civil Enforcement Suits." Harvard Law Review. Vol. 89, 1976, pp.1779-1808.

Code: US-X-c-7

Country: US

Type of Regulation: Business Regulation

Name of Agency: Justice Department

Program Title: Occupational Disqualification

Initiation and Termination Dates: n/a

Relevant Legislation: (reference to: Labor-Management Reporting and Disclosure Act, 1959 (29 USC 504(a))

Purpose: To sanction the misconduct of corporate executives to deter illegality, to protect people at large, and to fulfill society's demands for justice.

Procedure To Achieve Compliance: Through disqualification from office through criminal sanctions or civil sanctions. Labor law allows disqualification, forbidding convicted felons from holding union office.

Responsibility: Through court decisions.

Enforcement: Barring the individual from holding office is used as a legislative device to insure against corruption.

Evaluation: Section 504(a) has a sweeping effect because it does not restrict the disqualifying felonies to those committed during the course of the union duties or those directly bearing on the ability to perform union duties in a trustworthy or legal manner. The result is unequal treatment of union and corporate officers. The legislature was permitted to disqualify all members of the class, rather than being required to delegate to the courts the responsibility of determining the character of each individual based on all relevant facts, including prior convictions. Similarites between union managers and corporate executives exist to justify the extension of disqualification (McDermott, p. 628).

References: Martin F. McDermott. "Occupational Disqualification of Corporate Executives: An Innovative Condition of Probation," The Journal of Criminal Law and Criminology, Vol. 73, No. 2, 1982.

Code:US-X-c-8

Country: US

Type of Regulation: Business Regulation

Name of Agency: Justice Department

Program Title: Occupational Disqualification

Initiation and Termination Dates: n/a

Relevant Legislation: (reference to: Deposit Insurance Act, 1950, (12 USC Section 1829 (1980); Securities Exchange Act, 1934 (15 USC Section 780(b)(4)(B) (1981); Labor-Management Reporting and Disclosure Act, 1959 (29 USC 504(a).

Purpose: To sanction the misconduct of corporate executives to deter illegality, to protect people at large, and to fulfill society's demands for justice.

Procedure To Achieve Compliance: Through disqualification from office through civil or criminal sanction. Several Acts provide disqualification as a sanction. Other statutes establish character standards that must be met to qualify for admission to an occupation. Felony convictions constitute grounds for denial or revocation of licenses.

Responsibility: Licensing authorities issue or revoke licenses. Judges and legislators select a mix of criminal, civil, administrative and private remedies. Disqualification can be imposed independently of any specific statutory authority.

Enforcement: Criminal sanctions are seen as a last resort to be used, selectively and discriminatingly, when other sanctions have failed. Often enforcement is limited to pursue civil remedies or indict only the corporation, not the responsible executive. Procedural safeguards in criminal cases often are an important factor in the choice to proceed civilly. Because a corporation cannot be imprisoned, the same penalty in fines can be more easily achieved. Civil damage suits result in larger monetary penalties than criminal suits. Penalties of charitiy services have insufficient deterring effect. Retribution, incapacitation and rehabilitation are believed by many judges to be unnecessary or not achievable.

Corporate disqualification penalizes effectively: costs are imposed in terms of lost work opportunities, and the responsible executive must pay the fine. Decrees are used to restructure management or relieve management of various aspects of control through consent orders or prohibitions. Consent orders are issued pursuant to either administrative proceedings or court actions and can be narrowly or broadly fashioned. Prohibitions are for particular time periods or duties. Decrees may be imposed after an administrative hearing, rendering a criminal trial unnecessary. By imposing disqualification as a special condition of probation, the courts have broadened the use of disqualification from the civil into the criminal law.

Evaluation: The Justice Department lacks the manpower, the expertise and, in some cases, the motivation to conduct successful criminal investigations and prosecutions. Regulatory agencies are often unaware of material in corporate records. Prosecutors are aware that juries often refuse to convict individual businessmen, even when convicting the corporation. Imprisonment is not a credible threat.

Many corporations view fines as merely a "cost of doing business". Deterrence effect is insufficient. The assumption of internal discipline within a firm is not realistic. There is a failure to impose internal sanctions. Disqualification may help to change attitudes and re-evaluate company policy, in addition, it works to incapacitate those who succumb to illegality. A court imposing disqualification should issue the offender a certificate stating which privileges are lost, the duration of deprivation and the reasons for the court's determination (McDermott, p.634). Charity work as an indirect form of disqualification constitutes unforseeable penalty.

References: Martin F. McDermott. "Occupational Disqualification of Corporate Executives: An Innovative Condition of Probation." The Journal of Criminal Law and Criminology, Vol. 73, No. 2, 1982. pp.604-641. see also M. Clinard, P. Yaeger. Corporate Crime. 1980.

Code: US-X-c-9

Country: US

Type of Regulation: Business Regulation

Name of Agency: Securities Exchange Commission (SEC)

Program Title: Sanctioning Broker-Dealers

Initiation and Termination Dates: n/a

Relevant Legislation: Securities Act, 1933; Securities and Exchange Act, 1934

Purpose: To sanction the misconduct of broker-dealers and to protect people at large.

Procedure To Achieve Compliance: The SEC may: 1) institute civil action in Federal District Court to enjoin the firm, or any of its employees, from further violation; or 2) institute administrative disciplinary proceedings. An administrative proceeding is initiated with an order for proceeding naming the persons involved and the exact nature of the violation. Administrative hearings are held before an Administrative Law Judge and are conducted much like in a non-jury trial.

Responsibility: If a finding of willful violation is made, the SEC has the authority to sanction the offender.

Enforcement: Through administrative sanctioning which includes censure, suspension of up to one year, or expulsion (revocation of license or bar from association with broker-dealers).

Evaluation: Organizations are more likely to receive both the least and the most severe sanctions. Censure: 11% organizations, 3% individuals (total 6%) Suspension: 27% organizations, 41% individuals (total 36%) Bar or revocation: 63% organizations, 57% individuals (59% total) (Ewick, p.426).

There are significant disparities in the sanctioning of individual and organizational defendants. The overall severity of sanction received by individuals and organizations is similar, but the determinants of sanctions differ substantially. For individual violators, conventional measures of culpability figure prominently into the sanctioning decision. For organizations, operational viability is the principal determinant. This reliance on viability renders much of SEC's control of organizations redundant: the most severe sanctions are reserved for firms that are already operationally or financially moribound. The organizations that are most vulnerable to sanctions in the sense of being most assailable, are the least likely to attract control. Revoking the license of a bankrupt firm is a regulatory gesture; it implies action but commits none.

References: Patricia Ewick. "Redundant Regulation: Sanctioning Broker-Dealers." Law and Policy, Vol. 7, No. 4, October 1985. pp.421-445.

Code:US-X-c-10

Country: US

Type of Regulation: Civil Rights

Name of Agency: US Congress

Program Title: Civil Rights Enforcement--Prohibition through Legislation

Initiation and Termination Dates: n/a

Relevant Legislation: n/a

Purpose: To enforce legislation through injunctions requiring reorganization or through a regulatory agency's enforcement effort.

Procedure To Achieve Compliance: The non-enforcement of the Congressional mandate or delays in administration led to suits which forced administrative agencies to enforce legislation. Court actions were to get injunctions or a declatory order which required reorganization of an agency's enforcement effort. The injunctions specify the performance to which classes of potential beneficiaries are entitled. As well, they must determine the Congressional intends and the deed for remedial action. The degree of non-compliance affects the need for injunctions.

Responsibility: Initial executive self-regulation and Congressional oversight proved inadequate for the implementation of Congressional intent. Civil court decisions determine whether inadequate enforcement occurred and whether group rights makes beneficiaries special or ancillary.

Enforcement: Through declaratory orders, injunctions or through limited specificity. An agency has to develop a court approved compliance plan. The court can order an agency to procure additional enforcement resources. An injunction has to provide general guidelines. Civil penalties are in the form of a reporting condition whereby beneficiaries are entitled to return periodically. When an injunction is gained, contempt powers are available for violations.

Evaluation: This is an effective legal tool when legal error or administrative inefficiency are to blame, but not so when non-compliance is a result of bad faith.

References: "Judicial Control of Systemic Inadequacies in Federal Administrative Enforcement," Yale Law Journal, V.88 (1978) p.407.

Code:US-X-c-11

Country: US

Type of Regulation: Trade

Name of Agency: Federal Trade Commission (FTC)

Program Title: Misleading Advertisments

Initiation and Termination Dates: n/a

Relevant Legislation: Federal Trade Commission Improvement Act, 1975

Purpose: To stop false and misleading advertising.

Procedure To Achieve Compliance: Through FTC rules of practice. The FTC can issue cease and desist orders. Once an order is obtained against a particular company for a particular act or practice, the order also applies to anyone engaging in such acts or practices. Thus, a company which was not subject to the order can now be fined for violating the order.

Responsibility: The FTC can prosecute cases that previously have been considered to be in the realm of interstate commerce. They can move against practices "in or affecting commerce" and are not limited only to those actually in commerce. The FTC has rule making authority for the establishment of guidelines. The participation of consumer groups in FTC proceedings is funded through the FTC.

Enforcement: Violations of FTC rules are subject to fines and cease and desist orders. In addition, the FTC can seek relief through recision or reformation of contracts, refund of money, return of property, payment of compensatory damages and public notification.

Evaluation: The change in the applicability of cease and desist orders has a substantial multiplier effect. Possible penalties have increased substantially as well.

References: Richard H. Holton. "Advancing the Backward Art of Spending Money" in: Regulating Business: The Search for an Optimum. San Francisco, Institute for Contemporary Studies, 1978.

Code:US-X-c-12

Country: US

Type of Regulation: Business

Name of Agency: Justice Department, Courts

Program Title: Attorney Misconduct

Initiation and Termination Dates: 1983

Relevant Legislation: Amendments to Federal Civil Rule 11

Purpose: To sanction the misconduct of lawyers during civil litigation and to protect people at large.

Procedure To Achieve Compliance: The remedy is geared primarily to promote public rather than private interests. Under the new rule, any violation, whether willful or not, now requires, rather than permits, the court to subject the misconducting attorney to an appropriate sanction. Misconduct meaning, attorney signing paper that the case is founded on "reasonable inquiry,...well grounded in fact, (and)...warranted by existing law".

Responsibility: Federal Civil Rule 11 addresses the judicial regulation of attorney conduct. The new rule greatly expands upon the conduct regulated and also the form of judicial regulation.

Enforcement: Sanctions are to punish an attorney for litigation misconduct, to compensate those incurring injuries resulting from such misconduct, and/or to deter instances of similar attorney misconduct. Traditional disciplinary sanctions are used including: criminal contempt proceedings; disbarment, suspension, reprimand and admonishment.

Monetary assessments are payable to the government (related to governmental expenses resulting from breach of conduct) and there is a referral to a traditional disciplinary panel. The public interest sanction results also in a monetary assessment payable to court. The court serves as both prosecutor and adjudicator.

While sanction for criminal contempt is typically only penal in nature, the public interest sanction serves to compensate and/or to deter. Procedures for punishment need to be far more stringent and to encompass more limited (and different) kinds of misconduct than Rule 11-type provisions.

Evaluation: Safeguards attending the imposition of public interest sanctions during civil litigation have often been inadequate. Most courts focus on private remedy and compensate for individual losses. Some courts go beyond this by awarding compensation for the public's losses or by pursuing discipline in a multi-sanction setting. Significant differences go unappreciated.

The pursuit of public sanction is often set in motion without the accused being informed that public interest sanctions are being contemplated. Procedural differences between orders of compensation and orders of punishment are not properly recognized. The court fails at times to explain the basis of a public interest sanction. Explanation of the factors guiding the court are often lacking, because the underlying standards are lacking. Civil Rule 11 calls for "appropriate sanctions" only.

A Judicial review becomes complicated as oversight standards differ for orders of restitution and for orders of punishment. The overlap of two regulatory mechanisms is designed to address similar attorney misconduct. Public interest sanctions can be imposed quickly and are considered by the very same court in which the relevant attorney conduct occurred; these can serve to compensate, punish, and/or to deter. They can also address misconduct which demands more than an award of private interest sanction yet less a designation than a crime. The relationship between the two needs to be clarified.

References: Jeffrey A. Parness. "The New Method of Regulating Lawyers: Public and Private Interest Sanctions During Civil Litigation for Attorney Misconduct "(N.D.).

Code:UK-E-a-1

Country: UK

Type of Regulation: Environment/Health and Safety: Enforcement and Inspection

Name of Agency: Her Majesty's Air Pollution Inspectorate (1982) Health and Safety Executive

Program Title: Standard Setting--Best Practical Means

Initiation and Termination Dates: 1982

Relevant Legislation: Alkali, Etc. Works Regulation Act, 1906 Section 9: 1, 2, 7, 9, 13 Subsumed under Health and Safety at Work Act.

Purpose: To enforce environmental quality and emission standards. To raise standards above a minimum level through flexibility. To promote health, safety and welfare at work.

Procedure To Achieve Compliance: The Alkali, Etc. Act of 1906 requires a certificate of operation be issued and annually reviewed. Pollution control measures which are deemed necessary by the Chief Inspector must be adopted; these measures are assumed to be the best practical means to achieve pollution control. Through a specialized central governmental inspectorate, national inspectors control emissions through the establishment of individual standards for pollution emissions. These are individual in order to allow flexibility. Inspectors are accepted as advisors; consent is individually negotiated and used as a basis for further negotiation. It is assumed that only small steps may be taken at a time.

Responsibility: Inspectorates issue permits on grounds of best practical means. Standards are monitored and enforced by the Inspectorate. The assumption is that authorities can be relied on to proceed with prosecution if necessary.

Enforcement: A certificate is only stipulated if the Inspectorate is satisfied that the best practical means are used. The incentive is to reduce emissions through reduced charges. The flexibility in setting standards places an emphasis on cooperation. There is no well-defined line between what is a legal and what is an illegal operation. The decisions of the Inspectorate can be appealed to the Secretary of State for the Environment who becomes the final arbritrator. Cases may be referred to High Court for adjudication; parties are then bound to follow this decision.

Preparation and guidance for inspectors on the scientific and technical aspects of air pollution control is undertaken jointly by working groups of field and headquarters staff.

Evaluation: There is a high degree of cooperation, yet, the ability to require compliance is limited given the emphasis upon voluntary compliance. Penalties are no real threat as there is a reluctance to prosecute. What is stressed is a reliance upon social control and cooperation secured through consultation. The general public is excluded from this process.

In 1985, it was noted that securing compliance requires 70% of the time of the field staff, and 25% of the time of the headquarters staff. The number of emission tests and samples that are taken has been declining since 1980, as have inspections

References: Rhodes, G: Inspectorates in British Government, London: Allen and Unwin, 1982. See also case for Health and Safety.

Code:UK-E-a-2

Country: UK

Type of Regulation: Environmental

Name of Agency: Department of the Environment; Water Disposal Authority

Program Title: Licencing

Initiation and Termination Dates: 1974

Relevant Legislation: Control of Pollution Act, 1974 Sections 4, 6, 9, 10.

Purpose: To control waste disposal operations and to prevent uncontrolled dumping.

Procedure To Achieve Compliance: The 1973 Water Act created ten regions which were to be self-supporting, receiving their revenue from charges levied twice a year for sewage disposal and water supply. A joint working party of the Confederation of British Industry and the Regional Water Authorities established the guidelines for the levies. The amount and composition of the effluent are not measured continuously, but are based on the licence (consent) and can be adjusted in light of monitoring. According to Sections 5 and 6, a licence must be obtained from the waste disposal authority, this proposal is referred to the water authority. The local authority makes arrangements to occupy premises in order to carry out measurements and to supply information. Information must be kept in a register open to the public, though certain exemptions do apply. The authority sends out notices to comply; the second notice will specify a date for the revoking of licences.

Responsibility: The Waste Disposal Authority has the right to issue licences and to set conditions for dumping. In addition to this, the Authority imposes operating conditions; supervises and enforces; and carries out investigations on premises other than private dwellings. Licence decisions can be appealed to the Secretary of State where decisions may be altered.

Enforcement: Penalties in Magistrate's Court are assessed at L50 a day to a maximum of L400, in addition there is a maximum of 2 years in prison for unlicenced dumping. There is no upper limit to penalties assessed in Higher Court although the sentencing maximum is also 2 years in prison. The local Authority issues an abatement notice, if this is not complied with totally, including any attached conditions, the Authority has a duty to apply to the Magistrate's Court for a nuisance order. A contravention will lead to liability pay. At the same time, the Authority is enabled to take steps to abate nuisance and to charge the offender the costs. If there is a consideration that the process before Magistrate's Court would afford an inadequate remedy, proceedings may be taken to Higher Court. Failure to comply with such an order may result in punishment by imprisonment and/or the assessment of fines.

Evaluation: The licences tend to reflect local conditions and be fairly standard. Enforcement is responsive to the circumstances of the particular firm. Broad discretion is exercised, and the focus is on gradual abatement, with little attention given to the consequences of "forgiveable non-compliance" until the sewage works are unable to handle the sewage or agriculture is threatened by the quality of the sludge. Due diligence, in this instance, is defined in terms of using the best practical means or technologies, and no emphasis is placed upon mitigation measures. There is no obligation to inform government of new or improved technical means. Inspectors view themselves as diagnosticians, and do not seek to fulfil a law enforcement role. There is an unwillingness to define firms as negligent. There are also no administrative penalties, and litigation is intended to serve the function of deterrence primarily. Public involvement is not encouraged, and prosecution is most likely when sewage works personnel claim that the sewage works are overloaded. Concern is evident for industry and its claim that licensing creates conditions for unfair compeititon. In his study, Richardson found that 30% of all effluent samples were technically non-compliant, but no prosecutions resulted.

References: Department of the Environment: Pollution Control in Great Britain: How It Works; Pollution Paper No.9; London: Her Majesty's Stationary Office, 1976. Richardson, Genevra et al., Policing Pollution, Oxford, Clarendon Press, 1982. See also Vogel, David, National Styles of Regulation: Environmental Policy in Great Britain and the United States, Ithica, Cornell University Press, 1986,
Chapter 2.

Code:UK-E-a-3

Country: UK

Type of Regulation; Environment

Name of Agency: Inspectorates

Program Title: Sanctions and Education-Inspection

Initiation and Termination Dates: data not available

Relevant Legislation: Alkali and Clean Air Acts (no particular reference)

Purpose: To educate wrongdoers to comply with the regulation of pollution control.

Procedure To Achieve Compliance: The deterrence model, an emphasis on persuasion and cooperation, is used in connection with regular inspections. Improvement notices are sent and polluters are given advice as to improvements. Once a local authority is satisfied that non-compliance exists, an abatement notice is issued. If the notice is not complied with, the authority has a clear duty to apply to Magistrates's Court for a nuisance order. The contravention of any such order will lead to specific liabilities, either a maximum fine of L400, or L50 for each continuing day. The authority is enabled to take further steps to abate nuisance. This involves taking the proceedings to High Court to further pursue abatement or a prohibition order. A failure to comply at this level results in a finding of contempt of court and the possibility of imprisonment.

Responsibility: The Inspectorates have full responsibility.

Enforcement: Prosecution is seen as the avenue of last resort. The civil courts through the Attorney General have residual power to impose injunctions to curb illegal acts, however, this procedure is exceptional and rarely imposed.

Evaluation: The conciliatory approach leads to little change in attitudes concerning pollution. Enforcement agencies become the hand-maidens of industry. The average fine for conviction is only 50% of the maximum available fine. The Inspectorates claim that the cooperative approach resulted in greater progress.

References: Richardson, Generra; Anthony Ogus; Paul Burrows: Policing Pollution: A Study of Regulation and Enforcement; Oxford, Clarendon Press, 1982. pp.60-63.

Code:UK-E-a-4

Country: UK

Type of Regulation: Environment-Water Pollution

Name of Agency: Regional Water Authorities (RWA)

Program Title: Inspections

Initiation and Termination Dates: 1974

Relevant Legislation: The Water Act, 1913; Control of Pollution Act, 1974

Purpose: To restore and maintain the wholesomeness of rivers and to enhance and preserve amenities.

Procedure To Achieve Compliance: There is both a reactive and a proactive component to the actions of RWAs. Pollution control field staff work to identify a discharge as pollution or, on notice of a third party, act to identify the polluter. The proactive approach includes routine and regular surveillance by sampling or inspections. There is a distinction made between one-time and persistent polluters. Where there is a persistent problem continuing surveillance is maintained while negotiation is engaged in to encourage compliance. When the polluter has no prior record of incidents, an effort is made to correct the damage and to prevent recurrence by blocking emissions and taking remedial actions. Invoking Practical Criminal Law involves collecting samples and allocating blame.

Responsibility: The River Pollution Inspectorate's authority has been transferred to the RWAs. Inspectors of the RWA give advice, negotiate compliance actions and ensure that statutory provisions are observed. They are also responsible for sanctioning deliberate or negligent lawbreaking.

Enforcement: The focus is on a conciliatory stance with an emphasis on effort to comply or upon sign of compliance. Given the difficulty in persuading polluters to take remedial action the emphasis is on delay tactics. Compliance is seen as a fluid, negotiable matter with much depending upon the personal style of the officer involved. The formal legal process is seen as the avenue of last resort.

Evaluation: No information available

References: Hawkins, Keith: Environment and Enforcement: Regulation and the Social Definition of Pollution, Oxford, Clarendon Press, 1984. (TD 423 H39) Rhodes, Gerald: Inspectorates in British Government, London: George Allen and Unwin, 1981.

Code:UK-E-a-5

Country: UK

Type of Regulation: Environment

Name of Agency: Secretary of State for the Environment. Harbour Authorities

Program Title: n/a

Initiation and Termination Dates: March 1, 1973

Relevant Legislation: Prevention of Oil Pollution Act, 1971, Section 7 & 8

Purpose: To prevent oil spills.

Procedure To Achieve Compliance: Through the intent to proscribe the discharge of oil, when a discharge happens in culpable circumstances, there is the provision to clean it up in order to limit pollution. Liability is mitigated under the Act and criminal fines are a last resort. The decision to prosecute is related to the likelihood of conviction. Section 20(2) provides for a court imposed fine which may be paid in whole or in part to persons incurring expenses in removing pollution.

Responsibility: The Secretary of State can give directions to a ship to prevent or to reduce oil pollution as per section 8(2).

Enforcement: Prosecution for an illegal discharge is brought by or with the consent of the Attorney-General; by the Section for Trade and Industry; and by the Harbour Authority. The clean-up of an oil spill may result in the avoidance of prosecution and criminal penalties. A Magistrate may levy a maximum fine of L50,000 to the owner or master of a ship, although fine assessment should not be beyond the offender's means. Appeal proceedings are possible. There are difficulties in enforcing the law where it is a case of a foreign ship polluting British waters. Although under Section 18(7) the master of the ship can be arrested, there is no power to detain the ship.

Evaluation: no data available

References: Dickens, Bernhard: "Law Making and Enforcement: A Case Study"; Modern Law Review, 1974 No. 37 pp.297-307. Brown, MA: "Enforcement of Oil Pollution Legislation: A Practitioner's View"; Modern Law Review No. 39 pp.162-168.

Code:UK-E-a-6

Country: UK

Type of Regulation: Environment/Water Pollution

Name of Agency: Secretary of State for the Environment. Regional Water Authorities

Program Title: Charges/Special Taxation

Initiation and Termination Dates: 1974

Relevant Legislation: Control of Pollution Act, 1974, Section 52

Purpose: To maintain the wholesomeness of rivers.

Procedure To Achieve Compliance: RWAs are authorized to demand payment for the the reception and treatment of effluent as a condition attached to the consent of discharge. Payments are intended as a charge for services provided by the sewage authority. Charges increase with the level of pollution in question. The regulation does not specify the precise basis of charges, the discretion rests with the charging authority. Since 1970 there have been charging guidelines. Section 10(1) of the Public Health Act (Drainage of Trade Premises) 1937, enables an officer to enter a premises to take samples.

Responsibility: The Regional Water Authority issues a consent to discharge and are empowered to set the charges as they see fit.

Enforcement: This is an incentive scheme to reduce pollution. The RWA's charges are legally enforceable. Section 52 of the Control of Pollution Act introduces the possiblity of an incentive scheme through the provision of power to alter the basis upon which charges are assessed.

Evaluation: There is an unwillingness to collect charges. Effluent treatment experts are not tax collectors. Although sometimes used as an incentive scheme this is primarily an enforcement device.

References; Richardson, Genevra; Anthony Ogus, Paul Burrows: Policing Pollution: A Study of Regulation and Enforcement; Oxford, Clarendon Press, 1982.

Code:UK-E-a-7

Country: UK

Type of Regulation: Prohibition/Permit

Name of Agency: Secretary of State for the Environment. Local Inspectorates

Program Title: Smoke Control Orders

Initiation and Termination Dates: 1968

Relevant Legislation: Clean Air Act, 1968, Section 13, 5, 6, 8-10, 11

Purpose: To eliminate dark smoke emissions.

Procedure To Achieve Compliance: Local authorities have the power to declare smoke control areas in order to prohibit dark smoke emissions. The Secretary of State for the Environment may, by order, provide for regular emission tests, approval of chimneys and after-the-fact control of 'statutory nuisances' under the Public Health Act, Part III, 30 110-113. Local authorities are empowered to make smoke control orders which are subject to confirmation by the Secretary of State. Before an order of exemption is confirmed, it must be advertised. If objections are made and not withdrawn, a local inquiry or hearing must be arranged. If a private household must change the means of heating; 70% of the costs can be reimbursed from the local authority who issued the smoke control order.

Responsibility: To control emissions from industrial combustion processes and in private households not within the scope of the Alkali Inspectorate. There is no power to regulate pollutants from non-combustion processes.

Enforcement: Primarily through control orders, infraction notices, threats and the implementation of prosecution. Subject to the confirmation by the Secretary of State (Section 10) the local authority issues smoke control orders. The reimbursement of costs for private households falls under the Clean Air Act, sec. 8-10. Prosecution leading to criminal fines is rarely applied.

There is a maximum fine of L100 for use of a furnace prohibited under Section 3(1). Failure to comply with a smoke control order is a criminal offense subject to a maximum fine of L20 (Section 9(1). Section 12 (2) of the Clean Air Act and Part II of the Public Health Act allow the local authority to require a change of equipment for burning. Section 8 of the Clean Air Act gives the Secretary of State for the Environment the authority to direct local governments to make necessary smoke control orders.

Evaluation: no data available

References: Department of the Environment; Pollution Control in Great Britain, Poll. Papers No. 9; Londen, Her Majesty's Stationary Office, 1976. Rhodes, Gerald: Inspectorates in British Government; London, George Allen and Unwin, 198l.

Code:UK-E-a-8

Country: UK

Type of Regulation: Environmental

Name of Agency: Secretary of State for the Environment. Regional Water Authorities

Program Title: Comprehensive Water Management

Initiation and Termination Dates: 1974

Relevant Legislation: Water Act, 1973 (no particular reference) Control of Pollution Act, 1974

Purpose: To provide flexible standards through which to enforce environmental quality and emission standards. To restore and to maintain the wholesomeness of rivers through a managerial approach.

Procedure To Achieve Compliance: Regional Water Authorities (RWA) remove control from local authorities. As a multi-purpose organization the RWAs favor a managerial approach to control. This is achieved through negotiation, routine monitoring, and the inspection of emissions. Remedial measures are prescribed for 'technical' as opposed to 'drastic' pollutors. Results are published. The polluter sends a trade-effluent notice to the RWA which then postpones or prohibits the discharge or consents to it conditionally or unconditionally. Under the legislation cooperation through negotiation as a form of social control is stressed. Possession of consent becomes crucial given that it renders lawful an offensive, unlawful discharge. The authority may require that inspection chambers and monitoring apparatus be provided along with record-keeping with respect to effluents. The RWA may require payment as a condition of consent.

Responsibility: RWAs have complete water management responsibility which includes control over emissions, conservation, sewage, sewage disposal, pollution, maintenance, improvement and development of fisheries, land drainage, flood prevention and water recreation. RWAs have dual responsiblity over the setting of standards and the enforcement of such.

Enforcement: Achieved through the legislative definition of unlawful conduct. RWAs are permitted to make by-laws and to render administrative fines on an increasing scale based on the Control of Pollution Act. The public may also bring legal action against a discharger.

Evaluation: Enforcement activity is directed towards correcting damage already done, preventing recurrences and deterring others. Primarily the focus is to stop the pollution source. Decisions of the RWA can be appealed to the Secretary of State for the

Environment who stands as the final legal arbitrator. Decisions may, however, also be referred to High Court for Adjudication. The desire to avoid appeals puts RWAs on the defensive in their practices. Legal action threatens their control over consensus building. The ability to require compliance is limited and penalties are no real threat. Cooperation is secured through consultation and the cooperation of industry to comply. The legal route is viewed as a last resort to restore the credibility of the RWA.

References: Gerald Rhodes, Inspectorates in British Government, London, George Allen and Unwin, 1981. Keith Hawkins, Environment and Enforcement, Oxford, Clarendon Press, 1984.

Copy: UK-E-a-9

Country: UK

Type of Regulation: Environmental

Name of Agency: Department of the Environment

Program Title: Land Use Planning

Initiation and Termination Dates: 1971

Relevant Legislation: Town and Country Planning Act, 1971 (no particular reference).

Purpose: To publicize the potential effect of proposed development.

Procedure to Achieve Compliance: The local authority is under a statutory obligation to publicize plans; to invite the submission of views; and to make a decision within 8 weeks of receiving an application. Developers can appeal to the Minister of the Secretary of State, who can then request a written statement or authorize a commission of inquiry. While public inquiries are possible, they are considered a last resort.

Responsibility: Local Planning Authority, the commissioner, the Secretary of State for the Environment.

Enforcement: Inspectors' reports are reviewed at higher departmental levels. A ministerial decision is reached by senior officials although in rare cases the Minister decides. Orders are judicially reviewable.

Evaluation: Only 5% of Local Planning Authority decisions are appealed. The emphasis is on negotiation and a retreat from the adversarial process. Many conflicts are solved through informal negotiations before applications are submitted. This approach has been successful in reconciling amenity and economic values.

References: David Vogel, National Styles of Regulation: Environmental Policy in Great Britain and the United States. Ithica: Cornell University Press, 1986, Ch.3.

Code: UK-E-a-10

Country: UK

Type of Regulation: General Rule-Making

Name of Agency: Regional Water Authorities (RWAs)

Program Title: Standard Setting/Emission Limits/Consents

Initiation and Termination Dates: 1974

Relevant Legislation: The Water Act, 1973; Control of Pollution Act, Part II, Section 34

Purpose: To restore and maintain the wholesomeness of rivers and to enhance and preserve amenities (Section 1).

Procedure To Achieve Compliance: In order to allow flexibility, Regional Water Authorities (RWAs) establish individual standards for polluting emissions. Emission Standards Consents are reviewed by the water authority. Discharges are examined to provide details of pollution, the RWA then has 3 months, after advertising to this effect, to make a decision. Appeals are decided by the Secretary of State for the Environment. Standard setting is based upon the philosopy of 'what is enforceable'. The decision of RWA constitutes what is accepted as 'wholesome'. Consents are individually negotiated with polluters and function as a basis for further negotiation of standards on an ad hoc basis.

Responsibility: RWA's have the dual responsibility to set standards and enforce compliance. Pollution control is transferred into administrative policy by senior officials and given practical expression through the setting of standards. This is achieved through the granting of licences to discharge. The policy has the ability to control the potential levels of pollution.

Enforcement: Section 18 and 19 empower the RWA's to make by-laws and to negotiate with dischargers. There are incentives to reduce emissions through the reduction of charges. The legislative mandate of the RWA's provides an emphasis on cooperation, negotiation and the ability to enforce based on a desire to avoid appeals. Standards are based on largely unexamined practices. While guidelines and standards are related, there is less tolerance with breaches of these standards. Non-compliance with standards is sanctioned while new standards are being negotiated.

Evaluation: The severity of enforcement changes over time and region. Recently enforcement has been less vigorous in order to meet deadlines for compliance. In this case, the intent to comply is as important as action. Penalties are no real threat as the legal route is taken only as a last resort. Secure restitution of services sanctions non-compliance and law-breaking and are an assault on the legitimacy of regulatory authority.

References: Keith Hawkins; Environment and Enforcement: Regulation and the Social Definition of Pollution. Oxford: Clarendon Press, 1984; Chapter 2.

Code:UK-E-a-11

Country: UK

Type of Regulation: Environmental

Name of Agency: various

Program Title: Absolute Prohibition of Pollution

Initiation and Termination Dates: 1876-1961

Relevant Legislation: Rivers Pollution Act, 1876, Sections 5 and 6, plus modifications

Purpose: To prevent water pollution.

Procedure To Achieve Compliance: The method adopted was to prohibit literally all forms of pollution but most carefully to limit the circumstances in which this prohibition might be enforced.

Responsibility: Local Sanitation Authorities

Enforcement: Only a sanitary authority could bring proceedings; it had to secure the consent of the Local Government Board; the latter, in considering whether to grant this consent, was to have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality. It was not to grant consent where the district in question was the seat of a manufacturing industry, unless it was satisfied 'after due enquiry' that means for rendering harmless the polluting liquid were reasonably practicable and available under all the circumstances of the case and no material injury would be inflicted by such proceedings on the interest of industry; finally, no proceedings in any case could be taken until two months after notice had been given of the intention to take such proceedings.

Evaluation: The extraordinary character of these legislative provisions scarcely requires emphasis: there can hardly have been a more blatant attempt by Parliament to obstruct the enforcement of a law which by the same enactment it created. Formal legislative fetters were imposed on the exercise of discretion to enforce. For the industrialist such a system created great uncertainties. Technically, he was faced with an absolute prohibition which rendered compliance with the strict letter of the law almost impossible even for the most conscientious. His only alternative was to continue his activities in the hope that any attempt to enforce the law would fail to surmount one of the many obstacles imposed by the legislature.

References: Keith Hawkins; Environment and Enforcement: Regulation and the Social Definition of Pollution, Oxford, Clarendon Press; 1984.

Code:UK-O-a-1

Country: UK

Type of Regulation: Health and Safety

Name of Agency: Health and Safety Executive--Inspectorates

Program Title: Best Practical Means (BPM) Guidelines

Initiation and Termination Dates: 1975

Relevant Legislation: Health and Safety at Work etc. Act, 1974; Section 5(1)-(2)

Purpose: To ensure compliance and raise the standards above the minimum level using the best practical means.

Procedure To Achieve Compliance: Inspectorates develop Best Practical Means (BPM) guidelines which serve as a guide for inspectors. These guidelines describe the control measures to be taken and frequently include technology-based emission limits. These guidelines are presumptive in that they assume the BPM is applied, they do not constitute binding regulations. Inspections on a planned basis take place through the Inspectorate. Standards are administratively negotiated.

Responsibility: Inspectorates not only enforce the law, but actually determine the extent of the law through exercising legislative authority in the setting of pollution standards. This constitutes a dual authority over definitions and enforcement.

Enforcement: Maintained through the imposition of escalating fines, possible imprisonment and through requiring restitution to improve standards. Prohibition notices are possible.

Evaluation: There are no systematic compliance records to guide inspectors. Neither the public nor industry have judicially enforced rights to have rules or guidilines on BPMs published. Neither do they have the right to participate in the formulation or revision of guidelines, or have access to the notes that establish these guidelines. Although the Inspectorate makes the guidelines publically available, there is no enforceable obligation to use these guidelines in enforcement.

References: Rhodes, G, Inspectorates in British Government , London: Allen and Unwin, 1982.

Code:UK-O-a-1

Country: UK

Type of Regulation: Health and Safety/Environment

Name of Agency: Health and Safety Executive/ Inspectorates

Program Title: Prohibition Notice

Initiation and Termination Dates: n/a

Relevant Legislation: Health and Safety Act: Section 22(2)-(4); 23(5); 24; 33(2)-(5)

Purpose: To avoid the risk of serious personal injury and to improve and maintain air quality.

Procedure To Achieve Compliance: Primarily through inspections. The inspector sends prohibitions notices and seeks remedies or cessation of violations. The assumption is that non-compliance with the emission limit note equals non-compliance to statutory requirements. A prohibition notice can take effect immediately as per Section 22(4). As well, articles or substances may be seized.

Responsibility: The Inspectorates ensure compliance by issuing administrative orders.

Enforcement: Statutes provide no civil enforcement authority. A prohibition notice may be issued in connection with criminal fines. A summary conviction may result in a penalty up to L400 (Section33(4)) or (Section 24) imprisonment subject to appeal to an industrial tribunal.

Evaluation: Criminal proceedings are rarely used as they are brought forward by inspectors and not by private citizens.

References: n/a

Code: UK-O-a-2

Country: UK

Type of Regulation: Health and Safety

Name of Agency: Health and Safety Executive-Inspectorates

Program Title: Self-Regulation--Safety Committees

Initiation and Termination Dates: 1975

Relevant Legislation: Health and Safety Work Act, 1974: Section 2(4)-(7); Section 5(l)

Purpose: To increase the responsibility of private parties for the design and maintenance of safe work conditions. To ensure health, welfare and safety at work by using the best practical means for preventing emissions into the atmosphere of noxious or offensive substances.

Procedure To Achieve Compliance: Codes of practice, developed by management, are monitored by both unions and management through safety committees. Premises are checked and performance is monitored by the Inspectorate who may also give advice or issue a formal improvement notice. In urgent cases, prohibition notices requiring a cessation of activity may be issued while negotiation is entered to seek ways of making improvements to meet standards.

Responsibility: It is up to the Inspectorates to maintain or improve the standards of health, safety and welfare in the workplace through the control of emissions of noxious substances to the atmosphere. According to Section 1(1)(d), these emissions may only be controlled in a particular premises. Employees and managers also monitor work areas. Employers' improvement remedy notice specifies faults and time period.

Enforcement: Negotiation is the primary means of enforcement after notification by the Inspectorate; prosecution is rarely pursued. The British Trade Union movement lacks staff resources needed for effective co-regulation because it is unwilling to levy the level of dues required for such staff, suggesting that safety is not a first priority. Genn suggests that the safety reps from major trade unions she interviewed lacked a sophisticated understanding of the structure of health and safety regulations. The reps were unable to get release time to participate in inspections, and were reluctant to enforce regulations because they were worried about job security. The safety reps, she argues did not receive support from the inspectors, and they were neither consulted nor could they accompany the inspector.

The success of this program is in terms of fact that it has persuaded employers and managers to assume a greater responsiblity for safe work conditions without a reliance upon minimum legal requirements. When safety expenditures are seen as expenses rather than investments, companies are hesitant to engage in preventative action because savings are not clearly specified. There are barriers to effective accountable self-regulation given the possibility of a weak commitment to safety and the inadequacy of powers to enforce standards. This is primarily a reactive approach which relies on management procedures and structures in addition to union co-regulation.

The approach is to advise, negotiate and persuade. The threat of prosecution has always been held in reserve, although prosecutions have been rare in part because of the time involved and the low level of fines that result. Many of the prosecutions that have taken place have been in direct response to accidents, and are not anticipatory in approach.

The system of notices, introduced in 1984, has provided inspectors with a new and highly effective scheme of administratively issued and legally endorsed sanctions that play a key role between the stages of advice and criminal prosecution. Because of changes in industry, it is currently less able than it has been in the past to assume the burden for self-regulation.

With respect to the consultative and tripartite processes, the central question is whether the supply of information they provide to industry is a supplement or a substitute for inspection. Moreover, the educational material is apparently only of real value when there is an inspector to advise on it and when good channels for the communication of information to industry actually exist.

Reference: Baldwin and McCrudden, pp 150-3. see also Genn, Hazel, "Great Expectations: The Robins Legacy and Employer Self-Regulation".

Code: UK-O-a-4

Country: UK

Type of Regulation: Health and Safety: Energy

Name of Agency: Nuclear Installation Inspectorate (NII)

Program Title: n/a

Initiation and Termination Date: n/a

Relevant Legislation:

Purpose: To ensure safety in nuclear installations.

Procedures to Achieve Compliance: NII licenses nuclear installations. As well, it monitors and inspects, using a sampling and auditing approach, to insure that standards and license requirements are met on a case-by-case basis, including safety planning, civil defense and evacuation drills. This includes both routine work as well as the response to extraordinary crises and accidents.

NII establishes codes of practice, rules, regulations, and guidance notes for inspectors. In the process of licensing, the inspectorate maintains the flexibility to decide the matters on each case, and to engage in negotiation of modifications. The case-by-case focus allows NII to adopt a conciliatory style with an emphasis on the concern for fairness and equity rather than upon the strict fitting of legal definitions to cases. The threat of fines or of closing down power remain as resources NII may draw upon. The inspectorate maintains prior review and evaluation to insure that designated issues are addressed prior to the initiation of a plan. However, in practice, the planning, vetting and the negotiation of a given part of a license are almost done simultaneously.

Responsibility: The aim of NII is to bring about compliance through bargaining. Inspectors are assigned to sites, one for each of the operating power stations.

Enforcement: Through the use of persuasion to maintain compliance with terms of licenses. Fines for violations and the closing down of power plants are sanctions which are infrequently used, in fact they are seen as actions of the last resort. The enforcement mode is not shaped by general policies as much as it is by the familiar and routine relationship formed between inspectors, branch and section heads and the concern for the particular persons, situations, and constraints that reduce or enhance opportunities to comply.

Evaluation: The character of NII is mutable and flexible. There is a presumption that information is derived from pro-active visits, inspections, and investigation, and this information is channeled upwards to become the basis for other decisions. Yet, this presumption does not reflect current practice. Because of the overwhelming number of relevant facts, inspectors have to take basic data on trust. The inspectorate can do only very limited independent research. NII staff feel their department is radically understaffed, very much over-worked, and under pressure. There is the perception among inspectors that there is a lack of coherent administrative direction.

References: Peter K. Manning. The Policy Process in the British Nuclear Installations Inspectorate. April 1. 1987.

Code:UK-X-a-1

Country: UK

Type of Regulation: Trade Regulation

Name of Agency: Director General

Program Title: Competition Policy

Initiation and Termination Dates: (Year 2)

Relevant Legislation: Trade Description Act; Fair Trading Act

Purpose: To vet mergers in order to avoid monopoly abuse.

Procedure To Achieve Compliance: Framers of the anti-trust legislation have attempted to define in formal terms the type of cartel behavior or abuse of market power which they wish to proscribe or regulate. Through self-regulation; the Director General monitors the performance of industry. Where monopoly abuse is found a referral for investigation is made. The Director General has the discretion to choose to investigate. Restrictive trading agreements must be registered and they can be taken to Restrictive Practices Court or to the Secretary of State to determine whether or not they are in the public interest. In the simplified form, a certificate is issued.

Responsibility: The Director General monitors the performance of industry and takes note of complaints.

Enforcement: In 1984 there were 4 references to investigate by the Director General. There is a conditional allocation of privileges, behavior is not audited. Court decisions are another route to compliance. There is a push for increased competition and for the reduction of regulation. There is no presumption that mergers are against the public interest, and if there is insufficient evidence, a merger will not be criticised even when the benefits are not readily apparent.

Evaluation: As this is a very complex area of legislation, use reference material for evaluation.

Reference: Baldwin and McCrudden, pp. 208-226.

Code:UK-X-a-2

Country: UK

Type of Regulation: Trade Regulation

Name of Agency: Consumer Affairs

Program Title: Fair Trading

Initiation and Termination Dates: (Year unclear)

Relevant Legislation: Consumers Credit Act, Part III, various sections

Purpose: To protect consumers and investors from bad business practices by providing a degree of ex ante protection to consumers of credit and a uniform treatment of the variety of different credit types. It was intended to deal with the "high error costs" for uninformed consumers, and the inadequacy of private law rights to police malpractices.

Procedure To Achieve Compliance: The Director General has a broad discretion in exercising quasi-judicial powers to grant, renew or revoke licences. Decisions of the Director General may be appealed to the Secretary of State and further appealed (on questions of law) to the High Court. Publicity for this program takes the form of brochures, booklets, market information and through seminar presentations. Complaints are heard in small claims courts. Licensing is an enforcement vehicle as licences can be revoked after warning orders are ignored. Under civil/common law, traders are asked to give their assurance of future conduct, if these assurances are broken, the Director General can file a court order. If the order is breached further court action may be undertaken and breach of orders can result in charges for contempt of court (although this has not happened yet).

Responsibility: The Director General has the power to exempt traders from compliance. Most responsibility rests with the Trading Standards and Consumer Protection Departments.

Enforcement: Through court orders, actions and through revoking licences. In 1984 there were 68 assurances, 90 approaches for assurance, 1 court order against a trader who refused to make an assurance and 3 court proceedings to obtain orders. There are now new powers to seek court orders and to prohibit the publication of misleading information. There has been an increase of applications for exemptions from the Consumer Credit Act. There has been an increase in court orders and fines for broken assurances.

When a licence is revoked, there is no distinction made between conscious and unconscious violation.

Evaluation: The licensing mechanisms are regarded as a valuable regulatory weapon, a powerful bargaining lever in securing compliance with a wide variety of consumer legislation, in deterring potentially unfavourable behavior and in deterring unscrupulous operators. It has also been used to secure compensation for consumers. Yet licensing has high administrative and enforcement costs, and critics have called it a blunt instrument in part because it pushed the less reputable operators into unregulated areas of consumer finance.

The majority of assurances have been sought against small firms or individual traders, primarily in the used car, home improvements, mail order and electrical businesses. The majority of these traders ceased to trade some time after giving an assurance.

Reference: Baldwin, Robert, and Christopher McCrudden, Regulation and Public Law, Wedenfield and Nicholson, 1987 pp 193-7.

Code:UK-X-a-3

Country: UK

Type of Regulation: Trade - Consumer Affairs

Name of Agency: Office of Fair Trading

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: Consumer Credit Act, 1974; Fair Trading Act, 1973

Purpose: To ensure fair trade practices.

Procedure To Achieve Compliance: Through the licensing of businesses offering credit to consumers. Under the Fair Trading Act, the Office proposes regulations for controlling trade practices adverse to the economic interests of consumers. Persistent business offenders are dealt with by the issuance of cease and desist orders or by obtaining an undertaking. Voluntary codes of practice are negotiated for sections of commerce and industry and information is distributed to consumers. There are four actions possible in response to a complaint: a matter may be overlooked; the business may be advised as to how to avoid a recurrence of the problem, a warning in the form of a caution may be issued; or prosecution may be instituted.

Responsibility: The Office of Fair Trading oversees trade.

Enforcement: Enforcement devolves by law upon county councils. Caution is exerted as decisions may be cited in future court proceedings. The Office of Fair Trading issues cease and desist orders and facilitates negotiation of voluntary codes of practice.

Evaluation: The process depends heavily upon complaints which is somewhat dangerous as some deceptive trade practices are only discovered if the agencies take initiative and engage in monitoring. Advice and caution are often intertwined although cautioning behavior is not fully exploited as a prospective source of force. The agency lacks the ability to apply strong sanctions other than criminal prosecution, which is seen as the action of last resort and is rarely used. As such, the use of prosecution does not constitute an adequate deterrent. The fear that government may impose more consumer laws has led to voluntary amendments of trade practices particularly with reference to advertising. This is also a result of repeated prosecution of some firms for similar offenses with respect to advertising.

References: Ross Cranston. Regulating Business: Law and Consumer Agencies. London: Macmillan Press, 1979.

Code:UK-X-a-4

Country: UK

Type of Regulation: Trade - Consumer Affairs

Name of Agency: Office of Fair Trading

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: Trade Descriptions Act, 1968

Purpose: To ensure fair trade.

Procedure To Achieve Compliance: Through the prohibition of false descriptions by business. Action is taken mainly as a result of complaints received (90% for misdescribed goods: 98% for misdescribed services; 52% for mispricing.)

Responsibility: The Office of Fair Trading relies heavily on complaints to choose those prejudicial trade practices which it recommends that the government should regulate by statutory order or to identify those businesses where cease and desist orders should be issued. The decision to prosecute is based upon the perceived seriousness of the offence which is related to the magnitude and harm caused.

Enforcement: Through prosecution of criminal offences; through cease and desist orders for consistent breaches of civil or criminal law. There is a maximum fine of L400 if a prosecution is brought in a magistrate's court.

Evaluation: Imprisonment is a rarely used sanction; in the first 6 years it was only used 7 times and 6 sentences were suspended. Only the most serious transgressors are prosecuted. Fines are generally too low; the average fine is L76 per offense (Cranston, p.142).

Detailed regulations have led to an improvement in labelling and to a decrease in non-compliance. The level of assessed fines is too low to provide adequate deterrence. The assumption is that in the long run consumers are better protected if prosecution is used. Prosecution is used only in the clearest of cases given the need for certainty and success. Consequently those cases prosecuted are highly successful; there is a 89% conviction rate under the Trade Description Act from its inception in 1975 (Cranston, p.116).

References: Ross Cranston. Regulating Business: Law and Consumer Agencies. London: Macmillan Press, 1979.

Code: UK-X-a-5

Country: UK

Type of Regulation: Broadcasting: Cable Operators

Name of Agency: Cable Authority

Program Title: n/a

Initiation and Termination Date: 1984

Relevant Legislation: Telecommunications Act, 1984

Purpose: To enlarge both the freedom of choice for the viewer, and the opportunities available to program makers.

Procedures to Achieve Compliance: The Cable Authority issues licenses and controls programs by awarding franchises. Cable operators are now allowed to provide programs in direct competition with both the BBC and ITV. The Cable Authority negotiates license conditions which includes programming. The Authority has adopted a flexible, reactive posture which emphasizes oversight of the industry rather than detailed regulation.

Responsibility: The Cable Authority oversees the liberalised cable television industry. It is essentially a licensing and program-control authority over cable operator's franchises. In addition, the cable operator needs a license as a public telecommunications operator in order to be able to build the actual cable system. Office of Telecommunications (OFTEL) regulates cable systems over matters such as interconnections, provision of interactive services, and the pricing of these. Regulation through the Cable Authority ensures that liberalised firms will comply with the terms of their licenses. In addition, the Authority promotes competition in the industry; detects anti-competive practices; and, acts as a conduit for consumer complaints. It is a small, self-financing central government body which is not staffed by civil servants.

Enforcement: Conditions are enforced through the renewal of licenses and the withholding of franchises as necessary.

Evaluation: Detailed regulation of the industry was rejected because this would conflict with the idea of market-led expansion. The system was built on the premise that only a small degree of authority, exercized with minimum regulation and with a wide measure of discretion can respond to the dynamic cable industry.

References: Cento Veljanowski. Selling the State: Privatisation in Britain. London: Wenfield and Nicolson, 1987.

Code: UK-X-a-6

Country: UK

Type of Regulation: Trade: Capital Markets

Name of Agency: Office of Fair Trading (OFT)/Securities and Investment Board (SIB)

Program Title: n/a

Initiation and Termination Date: 1986

Relevant Legislation: Financial Services Act, 1986

Purpose: To protect investors and allow greater competition.

Procedures to Achieve Compliance: Through the prohibition of minimum commissions and through the separation of jobber and broker functions which the OFT considered to be anti-competitive. Self-regulated organizations (SROs) regulate defined markets. They develop rules that guide the behavior of financial institutions. The Act is administered and supervised by the Securities and Investment Board (SIB). Investment businesses may only carry on business if they are recognized by the SROs.

Responsibility: SROs are privatized regulators. The SIB acts as the central agency overseeing SROs and is a private company, self-financed by the industry and with the power of criminal prosecution. Staff is drawn from, and paid, by the industry. Legal and statutory status arises from being recognized by the SIB. The regulators in the SROs write the rulebooks and administer the regulations under the oversight of the SIB and the scrutiny of the OFT. The OFT ensures that the rules themselves do not act as a brake upon competition. The Department of Trade and Industry investigates insider trading; the Secretary of State, on the advice of the Monopolies and Merger Commission (MMC), decides whether mergers investigated by the MMC should be permitted or disallowed.

Enforcement: The withdrawal of recognition by an SRO prohibits a business to operate. The SIB has the power to invoke criminal prosecution.

Evaluation: Wider share ownership increases the political risks associated with any one financial scandal. The regulation of the capital market has altered from the "club" rules and sanctions of the Stock Exchange to a more formal system of self-regulation. Regulatory functions overlap and are fragmented. Several important areas, for example Lloyds of London, are not covered by the new regulatory system (Veljanowski, p.169). A system of two-tiered regulation has emerged which has overlaps between SROs, the SIB, the OFT and MMC. The financial sector permits active rivalry between SROs since it is up to the investment business to decide which SRO to join. Since each SRO is responsible for the rules it imposes upon its members, there is active competition to encourage members to join.

References: Cento Veljanowski. **Selling the State: Privatisation in Britain.** London: Wenfield and Nicolson, 1987.

Code:UK-X-a-7

Country: UK

Type of Regulation: Public Utilities: Gas

Name of Agency: Office of Gas Supply

Program Title: n/a

Initiation and Termination Date: 1986

Relevant Legislation: Oil and Gas (Enterprise) Act, 1982; Energy Act, 1983

Purpose: To use price control to allow a fair return to investors and a fair price to consumers and to prohibit anti-competitive practices.

Procedures to Achieve Compliance: Through the creation of one public utility gas company, British Gas, instead of the over 1,000 separate gas companies which existed prior to the 1984 Gas Act. British Gas is organized around ten regional boards. It needs a licence to operate. Organization is around the common carrier principle, in that competing gas firms are able to route their gas for a fee, through British Gas's transmission pipelines. The price controls on the newly privatised public utilities industry are in order to provide greater incentives for a cost economy of service provision. The regulation of service charges of gas is achieved by tying any increase in prices to the retail price index (RPI) minus some arbitrary figure designed to reflect changes in the technology of the industry. OFGAS monitors privatised firms and refers detected instances of monopoly abuse to the Office of Fair Trading.

Responsibility: The regulatory office of OFGAS administers economic regulations under the RPI-X rule which ensures that privatised or liberalised firms comply with the terms of their licenses. OFGAS promotes competition in industry and detects anti-competitive practices in addition to acting as a conduit for consumer complaints. Cases may be referred to OFT who refers, in turn, to the Monopolies and Merger Commission (MMC) where there is the possibility of potentially anti-competitive practices.

Enforcement: License conditions are enforced and anti-competitive actions are blocked or prohibited. The MMC reviews the conditions of a license at the time of renewal and influences new policies.

Evaluation: Competition has failed to materialize given British Gas's ability to offer a lower price to potential consumers of the third-party gas suppliers. There has been a failure to force structural change on British Gas given its extensive range of activities. British Gas dominates the whole level of distribution from the wellhead to the consumer.

The Regulatory Office has considerable discretion in administering regulations and often creates much of the law.

The system of control over the agency tends to be weak. The prospect of Judicial Review by the courts prevents the agency from acting beyond the scope of its power. As a result Regulatory Offices tend not to state clear criteria or give reasons for their decisons in order to prevent the courts from reviewing their actions. Privatisation has lead to the development of a subordinate layer of administration to complement the work of the competition agencies.

The scope of MMC has widened. Now the MMC has a direct role in regulation and when licenses expire, in addition, MMC will review the terms and make recommendations that could have an important bearing on the regulations of British Gas. The existing domestic competition law is inadequate as a device for controlling the anti-competitive practices of the privatised utilites. What has been lacking is the widening of privatised law enforcement with the reliance on the prospect of compensation for harm to encourage the indentification and pursuit of anti-competitive practices.

References: Cento Veljanowski. Selling the State: Privatisation in Britain. London: Wenfield and Nicolson, 1987.

Code:UK-X-a-8

Country: UK

Type of Regulation: Public Utilities

Name of Agency: Office of Telecommunications (OFTEL)

Program Title: n/a

Initiation and Termination Date: 1984

Relevant Legislation: Telecommunications Act, 1984

Purpose: To secure telecommunications services that will satisfy all reasonable demands and to maintain and promote effective competition.

Procedures to Achieve Compliance: British Telecommunications (BT) and Mercury need licenses to operate. The license includes coverage of such issues as competition, universal service, cross-subsidization, etc. OFTEL uses price controls in order to provide greater incentives for a cost economy of service provisions.

The regulation of the service charges made by British Telecom and Mercury is achieved by tying an increase of prices to the retail price index (RPI) minus some arbitrary figure designed to reflect changes in the technology of the industry. In BT's case, this works out to the average price of a revenue-weighted basket of services minus 3%. Price controls are designed to "hold the fort" until adequate competition develops.

OFTEL monitors and refers detected instances of monopoly abuse to the Office of Fair Trading (OFT). The Director-General of OFT can investigate the case and make an initial report. If conditions are unsatisfactory, the relevant Minister of State is requested to refer the issue to the Monopolies and Merger Commission (MMC). MMC reports to the Minister who may then act upon the report.

Responsibility: OFTEL administers economic regulations under the RPI-X rule; ensures that privatised or liberalised firms comply with the terms of their licenses; promotes competiton in industry and detects anti-competitive practices; and, acts as a conduit for consumer complaints. The Secretary of State appoints the Director General of Telecommunications for a period not greater than five years. The Monopolies and Merger Commission examines potentially anti-competitive practices. Since the Competition Act, 1980, the MMC has the power to investigate the performance of nationalised industries. This power is used almost exclusively to carry out efficiency audits.

Enforcement: Mergers and joint ventures are blocked if they are considered to be anti-competitive. The Director General steps in as an arbitrator in negotiations as necessary to achieve license agreements; for example, as in the case between BT or Mercury and other public telecom network operators over the price charged to interconnect. OFTEL does not have the power to enforce general competition laws relevant to the telecommunication industry. As well, OFTEL does not have the power to license new telephone companies or other carriers which could compete directly with BT as these powers are reserved by the DTI. If OFTEL wishes to modify the terms of the BT license, this must be referred to the MMC.

Evaluation: The RPI-X formula is attractive because it is simple and not vulnerable to manipulation by the regulated industry. It also contains incentives for cost containment. The X in the formula is not determined by the industry or influenced by costs. Yet, setting X is not a simple task. If it is set too high, the firm will earn excess profits, if set too low, the services may suffer or cost reductions are encouraged that are not in the long-term interest of the public, i.e.: the formula may lead to either high profits or deteriorating services.

Privatisation has lead to the development of a subordinate layer of administration to complement the work of competition agencies. The Regulatory Office (RO) is given considerable discretion to adminster the regulation. The system of control over the agency tends to be weak. The prospect of a Judicial Review by the courts prevents the agency from acting beyond the scope of its power. ROs don't state clear criteria or give reasons for their decisions in order to prevent the courts from reviewing their actions.

Since OFTEL was created, it has effectively blocked a joint venture between BT and IBM and enforced interconnect arrangements. OFTEL is a vigorous regulator committed to competition and is willing to change the rules if these are subverted by the regulated industry. The scope of MMC has widened. Now the MMC has a direct role in the regulation of British Telecommunications. When the license expires in 1989, MMC will review the terms and make recommendations that could have an important bearing on regulations affecting BT.

The existing domestic competition law is an inadequate device for controlling the anti-competitive practices of the privatised utilities. What has been lacking is the widening of privatised law enforcement with a reliance on the prospect of a provision of compensation for harm to encourage the identification and pursuit of anti-competitive practices.

References: Cento Veljanowski. Selling the State: Privatisation in Britain. London: Wenfield and Nicolson, 1987.

Code:UK-X-b-1

Country: UK

Type of Regulation: Trade

Name of Agency: Consumer Agency

Program Title: Mediation - Education

Initiation and Termination Dates: n/a

Relevant Legislation: No particular reference

Purpose: To obtain consumer redress and to avoid the future violation of fair trading practices.

Procedure To Achieve Compliance: (1) Through the routine inspection of businesses, sampling at retail outlets to check whether the business adheres to product standards. (2) Follow-up consumer complaints. Consumer agencies have reallocated resources to education and have given inspections a low priority. An agency officer educates the consumer and negotiates with business. Advice is given prior to purchase or as per legal rights after the purchase is made. Complaints involving criminal offenses are referred to the enforcement officer for investigation. The assumption underlying this practice is that when a business is cautioned and informed of an offence, compliance will result.

Responsibility: The consumer agency is neutral and is not a consumer advocate. Unless a consumer offense is involved, it lacks legal backing. Some consumer agencies have separate advice and enforcement services.

Enforcement: To achieve consumer redress and to negotiate compromises independently. In the case of an offence, the agency has the option to treat it as a criminal matter. Yet this action is seen as a last resort. Enforcement offices often withhold action if the business suggests a satisfactory solution.

Evaluation: There is a danger that the consumer will only be advised at the expense of prosecution and enforcement. Consumers are legally by-passed in the negotiation process (Cranston, p.90). Offenses are rarely prosecuted. Negotiation involves fewer resources than does legal prosecution. A business may be cautioned but no legal action taken, hence, the law has a limited role in the process. There are definite boundaries set within which decisions are made. There exist significant differences between consumer agencies with respect to their rates of prosecution and the use of mediation. Often an agreement is reached without the consumer gaining full legal entitlement. There is 75% success in reaching agreements, but only 50% in achieving full legal entitlements through negotiated settlements. Negotiation is carried out by officers with relatively little training.

References: Ross Cranston. Regulating Business: Law and Consumer Agencies. London. MacMillan Press, 1979.

CODE: AU-E-a-1

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: various state agencies

Program Title: n/a

Initiation and Termination Dates: 1970

Relevant Legislation: Environmental Protection Act, 1970

Purpose: The general goal of all agencies is minimal discharge consistent with the best practicable technology (except in the case of highly toxic materials and marine oil pollution, where strict prohibition is the goal).

Procedure to Achieve Compliance: "In no state are all regulatory functions relating to the environment entrusted to a single agency. Centralization of function is greatest in Victoria, Tasmania, and in New South Wales, where the Environment Protection Authority, the Department of the Environment, and the State Pollution Control Commission, respectively, bear primary responsibility for the major functions of air quality, water quality, and noise control. The Australian Capital Territory also has a relatively centralized (albeit small) environment protection section in the Commonwealth Department of Territories."

Strategies used include impact assessment, licensing with conditions, state agreements and indentures, self monitoring, mandatory self-reporting, and public involvement. Effluent charges have been considered but rejected because of the logistic difficulties of auditing honest measurements of emissions on which charges would be based.

In the Australian Capital Territory, under 1984 legislation, pollution control notices and instructions are added as conditions to crown leases, with penalties up to $50,000. In Sydney, the Metropolitan Waste Disposal Authority (MWDA) is chiefly an operating agency, but it has also engaged in campaigns to prosecute intractably non-co-operative transporters of toxic wastes, and it has established a system for the accountability of dangerous wastes which reduces the chances of unauthorized disposal.

Responsibility: In Victoria, the EPA can mount prosecutions without reference to the minister or without his approval. By contrast, ministers in Queensland and South Australia have prevented prosecutions from proceeding, and in Tasmania ministers have exempted companies from prosecution.

Enforcement: Virtually all environment agencies seek cooperative relations with industry. Most agencies pursue education and negotiation strategies. The Victorian EPA is significantly different in that it follows a deliberately more adversarial and prosecutorial strategy (Environment Protection Act, 1970). Although cooperative persuasion is tried first, agency officials believe prosecution is an important deterrent. The EPA's goal is prevention of pollution, not only abatement. Fines imposed in Victoria are highest in Australia. In NSW, the Pollution Control Commission professes a less adversarial stance, but also brings a high number of prosecutions. All other state agencies have very low numbers of prosecutions.

Evaluation: Use of state indentures has in some cases meant that companies are absolved from responsibility for polluting.

CODE: AU-E-a-2

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: South Australia. Engineering and Water Supply Department. Water Division.

Program Title: n/a

Initiation and Termination Dates: 1976

Relevant Legislation: Water Resources Act, 1976

Purpose: To control or prohibit water pollution by any person or industry. Under the Act it is illegal for any person to cause, suffer, or permit the discharge of any waste to come into contact with any waters directly or indirectly.

Procedure to Achieve Compliance: Water Quality Order System: granting of authorization to breach Sect. 61 of Act, under specified conditions and for a given period of time. In effect a licence to pollute. Agency sees its main role as education and negotiation with industry. Advises industry of detection of breaches of Act, issues warnings and educates re: penalties and alternatives for improvements. Has general rule-making power (Sect 79.2(d)) but is rarely used. Uses authorization process to encourage higher performance standards (however, have never withdrawn a licence). Makes some use of publicity to embarrass polluters--effective if company is concerned with public image.

Responsibility: Responsible to Minister for Water Resources. General regulations can be appealed to the Water Resources Appeal Board. Division comprises 8 staff.

Enforcement: Makes both announced and unannounced inspections. Not empowered to close operation of a facility. Issues warnings and "nasty letters" threatening prosecution. Prosecutes companies, not individuals. Prosecution rate low, due partly to lack of resources (less than 12 in 8 years). Fines have been low: highest fine was $2,500, out of theoretical maximum of $10,000 or $50,000 (depending which Act used). Division is also taking on responsibility for authorization of water treatment plants operated by its own Department.

Evaluation: Low fines levied has negative impact on Division morale--not an incentive to prosecute. Ministerial intervention has in the past prevented prosecution, and also prevented use of the publicity weapon. Water Division is regarded as weak compared to other South Australian environmental agencies. Upgraded powers and more coordination or integration of agency functions is considered needed.

CODE:AU-E-a-3

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: South Australia. Department of Environment and Planning.

Program Title: Air Quality; Pollution Management; National Parks and Wildlife. (Multiple programs--main focus here is air quality).

Initiation and Termination Dates: 1984

Relevant Legislation: Clean Air Act, 1984

Purpose: To protect public health and the environment. Basic philosophy is that emission standards should be based upon absorption capacity of local environment, and if best available technology will not meet these standards, the project is not approved. Emphasis on prevention rather than granting licence to pollute, because the latter is expensive to monitor adequately, and causes damage which is difficult to repair.

Procedure to Achieve Compliance: Sets emission standards for facilities case-by-case; consults with business re: a short timetable for compliance and educates about penalties for non-compliance. Primary focus is on education and conciliation, with prosecution as final resort. Indentures (agreements) also used for large resource projects.

Responsibility: Regulations and standards can be appealed to the Clean Air Tribunal.

Enforcement: Powers include: Injunctions, revocation of licence, shut-down of whole or part of facility--however, these rarely used. Inspectors have power to issue instructions in field. Prosecution is undertaken if timetables and undertakings for compliance not met. Companies do not view prosecution as idle threat (Data on fines not available). Warning letters used more in noise abatement.

Where the Department does not have direct legislative powers, inter-departmental cooperation is used to encourage compliance: e.g. liaison with federal government over granting of export licence to a project, or re: federal environmental impact assessment; liaison with other departments over pricing policies and granting of other government privileges.

Evaluation: Clear and consistent emphasis on partnership with business combined with willingness to prosecute if there is failure to meet compliance deadlines and standards. If priorities are clearly and consistently defined for the agency, the Minister and those regulated, then variable standards can be employed and the legitimacy of such an approach will not be challenged. Problem of detection is main barrier to increasing prosecution rate. The use of self-auditing, with legal requirement to report breaches or anomalies, is seen by Department as required in the future to cope with the volume of new projects.

CODE: AU-E-a-4

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: South Australia. Department of Marines and Harbours.

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: Marine Act, 1936

Purpose: To prevent marine oil pollution from shipping (among other marine affairs).

Procedure for Achieving Compliance: Every vessel arriving in South Australia is visited and oil pollution notice is put on board. They are told they are not to pump oil into the harbour and that they are required to report if it happens. There are fines for giving misleading information. A licence is required for pumping oil after dark, and for taking bunkers on board. There is a low use of publicity, and only at the Minister's request, although results of court cases are publicized.

Ship's Masters are licensed--licence can be suspended for reasons such as negligence, after a court of marine inquiry. (This relates more to fishing vessels than oil pollution.)

Responsibility: Decisions on whether to prosecute delegated from Minister to head of Department.

Enforcement: Prosecution is vigorous if negligence or failure to heed prior warnings is indicated. Maximum fine for pollution is $50,000--actual fines may be in range of $10,000 plus clean-up costs (which may be covered by insurance). A fine for pollution would be assessed against the Master or the owner, not the company.

Inspection is carried out by a small group of expert Master Mariners. Prosecution is carried out rapidly to catch ships while in port--magistrates and prosecutors flown in if necessary. Intention is to use prosecution as an example to industry.

Evaluation: One difficulty is in proving the source of oil pollution; samples from various ships are taken, but this may not be conclusive evidence.

Code: AU-E-a-5

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: New South Wales. Commissioner of Inquiry

Program Title: n/a

Initiation and Termination Dates: 1979

Relevant Legislation: Environmental Planning and Assessment Act, 1979, Section 119

Purpose: To inquire and make recommendations on controversial planning and environmental issues.

Procedure to Achieve Compliance: Uses full-time commissioners. Inquiry may be initiated by Minister or demanded by public. One or two commissioners appointed. Must be three weeks notice; widely advertised and held close to centre of controversy. Hearings rarely allow cross examination, although one expert witness may examine another. Hearings have four parts: Applications or Comments (includes applications for confidentiality, which is narrowly defined); Receipt of Primary Submissions; Questions and Answers (must be written and answers circulated to all participants); Final Statements. There is no transcript; Commissioner restates position of every witness to ensure they have been understood. Commissioner provides a written summary of issues.

Commissioner aims to narrow the issues in dispute; to produce a report which reflects every shred of opinion in the community and provides all the facts; and to frame recommendations designed to produce consensus between all parties. Focus is on "conditional approval"--conditions of approval which must address worst case scenarios providing compensation and mitigation for harm which might be generated. Emphasis is on conditions which allow development of consent. Does not usually recommend outright rejection of projects.

Responsibility: The Commissioner briefs the Minister for Environmental Planning on issues and implications, findings and recommendations. Ministers are prohibited from acting before the report of commissioner has been received. Implementation of recommendations is at discretion of Minister. Decisions can be appealed to the Land and Environment Court.

Enforcement: Once approved, there is a contract between the applicant and the State Pollution Control Commission specifying the custom-designed conditions of consent. Commissioner also ensures all undertakings are provided in writing. There are a range of legal remedies if applicant is in breach of conditions. In cases where future rehabilitation may be needed (e.g. mining), applicant must post bond large enough to cover future costs. Past record of firm is a factor in granting approval.

Evaluation: A good example of custom-designed regulation which includes provisions for the remedy of future harm before it actually occurs. Focus is on impacts of pollution etc. on local communities near industrial facilities, in contrast to "bubble concept" in US. Government may proceed without an inquiry. When they are held, in most cases action is taken as a result of inquiry. Difficulties arise if government wants to rapidly develop a policy on a particular controversial issue (e.g. rainforests).

CODE: AU-E-a-6

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: n/a

Program Title: Franchise Agreements

Initiation and Termination Dates: n/a

Relevant Legislation: No examples at hand

Purpose: To legislate conditions for approval of large scale development projects.

Procedure to Achieve Compliance: These agreements, which are ratified by an act of Parliament, detail the respective obligations of government and developer. The government may provide power and water and build roads while the developer may be required to pay a defined royalty, adhere to a specified timetable and comply with certain environmental standards.

Terms of agreements may be designed by Commissions of Inquiry reporting to the Minister concerned, thus permitting public input.

Responsibility: n/a

Enforcement: Companies often required to monitor emissions systematically and ensure that they remain below specified thresholds. Data may be periodically audited. Agreements can absolve signatories from any responsibility for emission controls. There may be implicit or explicit immunity from prosecution.

Evaluation: Permits flexible regulation, tailor made to a specific set of environmental contingencies.

CODE:AU-O-a-l

Country: Australia

Type of Regulation: Food standards

Name of Agency or Department: Department of Primary Industry

Program Title: Export Inspection Service (EIS)

Initiation and Termination Dates: n/a

Legislation: Not available

Purpose: To assure the quality of red meat exports.

Procedure for Achieving Compliance: Every carcass is inspected, making this the most intensive form of regulatory inspection. Also distinctive form of regulation because subject to scrutiny by inspectors from foreign governments.
A range of actions can be taken: condemning a carcass or a whole day's production, stopping a slaughter chain, shutting down a whole section of a plant, withdrawing an export licence or registration. Conditions can be imposed on licences, for example excluding specified individuals from meat preparation areas.

Responsibility: Export licensing is a function of the Australian Meat and Livestock Corporation, a marketing organization dominated by industry nominees, but it is difficult in practice to ignore requests by EIS to withdraw a licence.

Enforcement: Prosecution is used only for fraud which threatens export opportunities. There is an aversion to using publicity because of consequences for export opportunities. EIS has also been threatened with defamation proceedings by one large exporter.

Evaluation: The EIS has great power because it can stop production, which costs $20,000 to 30,000 per day. Large amount of resources are put into inspection, but Service is criticized for a lack of information flow from the field to head office. New monitoring and auditing programs have been put in place. State health agencies are critical that such intensive inspection applies only to exports.

CODE:AU-O-a-2

Country: Australia

Type of Regulation: Occupational Health and Safety

Name of Agency or Department: Various state departments of Labour and Industry, and Health

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: Various

Purpose: To ensure health and safety in the workplace

Procedure to Achieve Compliance: Based on an inspection system, which monitors compliance with general regulations. The approach to regulation is based on Robens philosophy, which views health and safety problems as based on worker and management apathy, and sees a natural identity of interests between them. (In Australia, this approach long preceded Robens.) Industry believed to be socially responsible. Certificates of competency are employed for those engaged in hazardous work. Some states require pre-clearance of industrial chemicals. All states require design review; new premises must have design registered and approved.

Responsibility: Inspectors have considerable powers and operate in a decentralized manner. Decisions to prosecute are made at this level and only occasionally involve the Minister. Most of the agencies use Crown Law Departments to conduct prosecutions, which has led to dissatisfaction due to lack of specialist knowledge in Crown Law.

Enforcement: The frequency of inspection of particular firms may be relatively rare--an interval of a year or more between inspections. There were 799 inspectors in Australia in 1984, about one for every 36 manufacturing establishments.

Evaluation: Unions have been skeptical of this "self-regulation" approach. There has been little effort to encourage industry or firms to write their own safety codes of practice, or formation of safety committees with employee representation. In South Australia and Tasmania there are legislative provisions for this kind of co-operative self-regulation, but it has not been implemented (see Braithwaite and Grabosky 1985, p. 26). Most agencies give highest priority to education and persuasion, and consider that more resources go into this area than into enforcement.

Prosecution rate is considered relatively low, and fines are low (average $200). Prosecution most likely following death or serious accident. Undertaken to assist in obtaining common law damages for serious injuries and to protect agency reputation in light of publicity. Virtually no written enforcement policies which state when prosecution should proceed or what is desired prosecution rate. Other sanctions include harassment (repeated inspections) which is the most often used; improvement notices, prohibition notices; licence suspension or revocation. All of these are not often used. Adverse publicity is very rarely used.

"In practice, then, general occupational health and safety inspectorates engage in traditional government command and control regulation. The inspectorates are highly proactive, but rather rule-book oriented" (Grabosky and Braithwaite 1986, p. 61). Australia's health and safety record generally regarded as poor (Gunningham 1987). Robens philosophy is used to justify lack of prosecution, but little effort to set up a structure of co-operative self-regulation. Some states have been re-drafting legislation in recent years to rationalize functions and include self-regulatory provisions.

CODE:AU-O-a-3

Country: Australia

Type of Regulation: Occupational Health and Safety

Name of Agency or Department: National Occupational Health and Safety Commission (NOHSC)

Program Title: n/a

Initiation and Termination Dates: 1985

Relevant Legislation: National Occupational Health and Safety Act, 1985

Purpose: To provide a national forum for tripartite consultation, education and policy and strategy formulation, on occupational health and safety matters.

Procedure to Achieve Compliance: The NOHSC represents a major allocation of new resources to occupational health and safety in Australia. It emphasizes a tripartite approach between industry, unions, and state and federal governments. Included in its purview of activities are:

(l) the development and declaration of national standards, utilizing tripartite working parties reporting to the National Commission's Standards Development Standing Committee.

(2) the development of an Australian data set on occupational health and safety, which will be publicly available, and also making overseas data more readily available.

(3) the development of an increased capacity for research, teaching, and professional advisory and consultative services to industry, through the National Occupational Health and Safety Institute. The Institute is liaising with tertiary institutions to develop relevant training courses, including a 3 year undergraduate course for occupational health and safety inspectors.

(4) issuing of grants of $1 million each to national union and industry representative bodies to develop training programs appropriate to their respective memberships.

Responsibility: as above

Enforcement: as above

Evaluation: This is a new, apparently innovative agency with wide-ranging research, consultative and standard setting functions. No evaluation yet available.

Reference: National Occupational Health and Safety Commission, Annual Report 1985-86.

CODE:AU-O-a-4

Country: Australia

Type of Regulation: Mining health and safety

Name of Agency or Department: Various state mining inspectorates

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: n/a

Purpose: Mining health and safety.

Procedure for Achieving Compliance: Mine inspectors usually have tertiary qualifications (unlike other Australian OHS inspectors) and must have certificate of competency as mine engineer and at least 3 years experience as mine manager. Overall there are 5,616 workers per safety inspector in Australia; but for mining employees alone, there are 616 workers per mine inspector. Some states help fund full-time union safety inspectors.

Legislation provides that where an instruction by owner or higher management might compromise safety, worker has right to request it in writing, and it is an offence not to comply with such a request. Inspectorates do not actively encourage formation of worker safety committees; consider education and persuasion as most important functions. Inspectorates also issue certificates of competency, and are part of a department which supervises all stages of mining--from exploration to closure.

Responsibility: Inspectors have considerable powers, and operate in a decentralized manner. Prosecutions are directed at individuals rather than companies; this is possible because responsibilities of employees are defined in detail in legislation.

Enforcement: Frequency of inspection is in the order of monthly. Mine safety regulation has long put into practice the idea that management must take the responsibility for writing, communicating, and internally enforcing codes generated by industry under the supervision of highly qualified government inspectors. Elected worker safety representatives have the power to inspect and stop production when required (except Tasmania and Northern Territory).

Evaluation: Prosecution rate is even lower than in other areas of Occupational Health and Safety (OHS). Maximum penalities are very low for a wide range of offences (e.g. $100). Inspectors prefer to mobilize internal private justice system of the mining company to discipline safety violations. Harrassment (repeated inspection) is another preferred form of pressure. The power to stop work is seen as a more powerful sanction than prosecution, although it is rarely invoked. License suspension or revocation rarely used, and adverse publicity is almost universally rejected.

"Mine safety inspectorates do have the resources, the expertise, and the worker-management support to contend, with a credibility that the general health and safety inspectorates do not have, that they are making informal social control succeed as an alternative to law enforcement. This does not extricate these inspectorates from the critique that their regulatory system wrongly assumes that there is always a community of interest between workers and management when it comes to health and safety" (Grabosky and Braithwaite 1986, p. 64). Gunningham (1987) attributes regulatory failure in the case of asbestos mining to: regulatory capture due to national economic importance of mining; structure of agency such that it was also involved in mining promotion; lack of active union or public constituencies concerned with environmental and health issues until the 1980s.

CODE: AU-O-a-5,6,7

Country: Australia

Type of Regulation: Radiation protection

Legislation: see entries under Occupational Health and Safety

Program Title: The following is a summary of regulation in three areas.

Uranium mining: Generally covered by mine inspectorates with assistance from Health Departments for diagnostic work.

"Radiation safety in mining operations in Australia is characterized by prior approval of projects following detailed evaluations of benefits and social costs; negotiated, contractual or voluntaristic reliance on codes of practice which are mostly international in origin; particularism; agreements between industry and government to share responsibility for monitoring exposures and audit such monitoring (with industry doing most of the monitoring and government most of the auditing); and total rejection of law enforcement as the regulatory model" (Braithwaite and Grabosky 1985, p. 59).

In Northern Territory, the Office of the Supervising Scientist (set up at the recommendation of the federal Ranger Uranium Environmental Inquiry) is a unique, well-resourced federal agency which monitors environmental protection and health and safety at two uranium mines. It is a monitoring rather than strictly regulatory agency: enforcement activities generally left to the Northern Territory Dept of Mines and Energy, but the Supervising Scientist has a powerful publicity weapon, because under a section of the Environment Protection (Alligator Rivers Region) Act 1978, formal reports to the responsible Commonwealth Minister must be tabled in Parliament.

Australian Atomic Energy Commission (AAEC): The Commission is a Commonwealth govevernmental body which is Australia's only producer of radioisotopes and radio-pharmaceuticals, and conducts nuclear research. There is no independent monitoring of workplace safety; instead there are 45 radiation safety officers, who work with union health and safety committees and a safety review committee of outside experts. External emissions from AAEC facilities are monitored by relevant federal, state and municipal agencies. Reactor safety is governed by a semi-autonomous Regulatory Bureau which reports directly to the chairman of the AAEC. The Bureau sets safety goals and standards which are then translated into detailed technical regulations. The Bureau is not adverserial, but attempts to build among its scientists a culture of "international safety professionalism", to counteract co-optation into the "nuclear scientific club".

State Health Departments: Functions mainly concern assuring safe use of irradiating apparatus and radioactive substances for diagnosis, as well as radioactive devices in industry. Based on registration of equipment and licensing of qualified persons to use them. Emphasis on self-regulation and professional education (including radiation safety officers); industry self-monitoring with government audit for diagnostic rather than policing purposes. When diagnostic advice ignored, this is followed by stern warning letters, threat of licence revocation, then actual revocation, suspension or stringent conditions. Prohibition orders also used. Prosecution almost never used. Publicity almost never used, although it is considered a potent threat because of public feelings about radiation dangers. The 1984 Victorian Health (Radiation Safety) Regulations under the Health Act, 1958 "constitute one of the most innovative legal frameworks for business regulation to be found in Australia".

CODE: AU-X-a-l

Country: Australia

Type of Regulation: Medicine

Name of Agency or Department: Commonwealth Department of Health. Therapeutics Division.

Program Title: Listing of drugs for Pharmaceutical Benefits Scheme (PBS)

Initiation and Termination Dates: n/a

Relevant Legislation: National Health Act, 1953; Therapeutic Goods Act, 1966

Purpose: To subsidize wide coverage of pharmaceutical benefits in such a way as to give value for taxpayer's dollar and to encourage good prescribing practices.

Procedure for Achieving Compliance: Australian Drug Evaluation Committee looks at quality, safety and efficacy. The Pricing Bureau Committee looks at whether drugs should be placed on the list of drugs subsidized by the PBS. Applications for listing or de-listing are made to the Committee, which advises the Minister of Health. The Committee has 6 members: three nominated by the Ministry, one by pharmaceutical manufacturers, one by Ministry of Industry, Technology and Commerce, and one by consumers.

The Pricing Bureau establishes the parameters within which a negotiator for the Ministry negotiates conditions for listing--price, sizes, formats, authorities to be required for reimbursement (e.g. requisite medical tests, prior approvals). The negotiator reports back to the Committee with a recommendation the Committee can accept or alter, which in turn recommends to the Minister. The PBS list is published quarterly and lists subsidized products, authorized uses, required authorities and prices. There is potential to withdraw listing, not only for violating these conditions, but also if a manufacturer violates the voluntary code of good manufacturing practice. Any price change must receive prior approval.

Responsibility: see above

Enforcement: Assistant Secretary of Therapeutic Division chairs the Committee. Incumbent secretaries have varied in their commitment to restricting the scope of the physician's discretion in prescribing through the need for prior authorities, and in willingness to use listing and threat of de-listing as tool for obtaining compliance with Division policies. Industry exerts direct pressure on MPs and the Minister, threatening to hold back introduction of new drugs, or cut back on clinical trials and research.

Evaluation: Due to its power to list or de-list, the Division has considerable regulatory power over the industry, making non-compliance a high-risk strategy.

Code: AU-X-a-2

Country: Australia

Type of Regulation: Product design standards

Name of Agency or Department: Commonwealth Department of Transport Office of Road Safety.

Program Title: Type approval

Initiation and Termination Dates: n/a

Relevant Legislation: Not available

Purpose: To ensure motor vehicles meet Australian design rules.

Procedure for Achieving Compliance: A prototype of a vehicle is certified as complying with all Australian design rules at least 3 months before the vehicle comes on the market. A compliance plate aproval is issued and the manufacturer is entitled to affix the plate to every vehicle manufactured for a specific period of time.

Responsibility: as above

Enforcement: Once type approval has been granted the only monitoring of quality control involves a visit to the manufacturer once every 18 months to audit the quality control system.

Evaluation: There is no independent government testing of final products to ensure compliance and that has resulted in a "worrying" level of non-compliance. Although in theory the compliance plate approval could be withdrawn, this has not happened.

CODE: AU-X-a-3

Country: Australia

Type of Regulation: Broadcasting

Name of Agency or Department: Australian Broadcasting Tribunal (ABT)

Program Title: n/a

Initiation and Termination Dates: 1977

Relevant Legislation: Broadcasting and Television Act, 1942

Purpose: Licensing of commercial broadcasting enterprises. Sets programming and advertising standards and has responsibility for approving or disapproving share transactions and ownership by 'fit and proper' persons.

Procedure to Achieve Compliance: The ABT is engaged in the granting of licences: licences may renewed, suspended, revoked, and conditions of licence may be imposed or varied. As a condition of licence, broadcasters must comply with all legislative provisions and with general standards set by the ABT in areas such as minutes of advertising per hour or program (this may have changed recently), standards for children's television, and Australian content. The Tribunal must conduct a quasi-judicial public inquiry on all licensing matters (subject to judicial review).

The ABT devotes considerable resources to maintaining a high public profile, giving notice of hearings, reasons for decisions, maintains a large mailing list of community organizations.

Responsibility: Decisions cannot be appealed to cabinet. Prosecutions must be cleared with the Minister of Communications, and with the Attorney General for prosecution under ownership provisions (never used).

Enforcement: ABT does not engage in large-scale monitoring of content. Relies on complaints, submissions to public inquiries, and whistle-blowing by Australian Journalists Association.

Evaluation: Level of non-compliance with some standards (e.g. Australian content) is believed to be considerable. The ABT has failed to ever revoke or suspend licences, although length of several have been shortened and special conditions imposed in a few cases. Tribunal has used threats of suspension hearings with some success, and also threats to revoke if improvements are not made. The Tribunal has encouraged industry self-regulation e.g. in television advertising, but has not required any form of accountability from the self-regulatory organization, despite complaints from consumer groups (Blakeney 1985).

Licensing power has proven too blunt an instrument to use in practical regulatory matters. "There is no power to put a station off the air for a short time without full-blown licence revocation hearings, nor is their any capacity to sanction an excessive advertising offence by cutting the permissible periods of advertising for a specified period, or to sanction an Australian content offence by requiring additional Australian content" (Grabosky and Braithwaite 1986, p. 181).

CODE:AU-X-a-4

Country: Australia

Type of Regulation: Transport (aircraft) safety

Name of Agency or Department: Commonwealth Department of Aviation

Program Title: Not Available

Initiation and Termination Dates: n/a

Relevant Legislation: Not Available

Purpose: Approval of design and enforcement of production and maintenance standards.

Procedure for Achieving Compliance: An aircraft type proposed for use in Australia has its full specifications, drawings and design calculations scrutinized for compliance with Australian standards. A team of between four and eight experts visits the manufacturer's factory for 2 to 6 weeks. Design methodology, quality control procedures and methods for demonstrating compliance with standards are assessed. Compliance must then be demonstrated by tests which must by witnessed by the source country's authorities. Critical tests must also be witnessed by officers of Department of Aviation. Copies of test reports are sent to Australia.

During construction of an aircraft, all quality checks and steps in the production process are signed off by an officer employed by the manufacturer but responsible to the national airworthiness authority. Once an aircraft is accepted, periodic airworthiness checks and audits of the maintenance work are a continuing requirement. There are also random checks and audits of the maintenance work which has been carried out by licensed aircraft maintenence engineers. Operators are given notice of most inspections. Companies are also required to comply with operations and maintenance systems and manuals which they themselves prepare with the approval of the Department, and there have been cases of prosecution for failure to comply with a company operations manual.

Responsibility: see above

Enforcement: The general practice is to suspend licences pending a full investigation.

Evaluation: Grounding non-complying aircraft is an important component of this approach. There has been at least one case where the entire fleet of an entire general (non-passenger) aviation company was grounded for non-compliance with maintenance requirements. Another powerful sanction, although rarely used, is withdrawal or variation of licenses for general aviation companies. Suspension and cancellation of individuals' licenses are more common. Each year about 100 pilot licenses are suspended for various reasons, mainly for short periods pending operational investigations. Aircraft mechanics, engineers, air traffic controllers also subject to suspension. In licensing matters safety is given priority over concern for justice in that suspected offenders are effectively assumed guilty until proven innocent.

CODE: AU-X-a-5

Country: Australia

Type of Regulation: Economic competition

Name of Agency or Department: Trade Practices Commission (TPC)

Initiation and Termination Dates: 1974

Relevant Legislation: Trade Practices Act, Part IV

Purpose: To preserve and encourage "competition and the elimination of anti-competitive business practices which, unchecked, will work major economic harm in the community, that is to suppliers, buyers and consumers" (Trade Practices Commission 1986).

Procedure for Achieving Compliance: Uses an authorization process which grants immunity from court action if the effects of anti-competitive conduct (e.g. mergers) are outweighed by the public benefits it produces. Authorization sought because it is usually a condition for loans from financial institutions.

Not applicable to cases of abuse of market power, resale price maintenance, price discrimination, or price fixing.

In its evaluation, TPC invites submissions from interested parties, and conducts field interviews with affected groups and companies. When proposing to grant or deny authorization, Commission first issues a draft decision. Interested parties have the right to request a conference with the Commission before the final decision. Subject to claims for confidentiality, applications, submissions, and decisions are placed in a public register. The test for mergers is high: "dominance". Duopolies are acceptable if both firms have about equal power. Authorizations have been given in the "national interest" without public benefits necessarily being apparent to the Commission.

Responsibility: TPC reports to the Attorney-General.

Enforcement: TPC consults with Industries Assistance Commission, Foreign Investment Review Board, and Prices Justification Authority. Application for review of final decisions may be made to the TPC. Appeals may also be made to the Administrative Appeals Tribunal.

Evaluation: The TPC has been unsuccessful with court action on structural anti-trust cases (winning one out of eight cases), but more successful with "conduct" or per se cases relating to anti-competitive agreements. Recently there has been a trend towards less litigation and more administrative resolution. Courts are not viewed favourably by

Commission because of time taken by legal manouvering, lack of expertise in the courts, superior financial resources of the companies, and lack of sympathy of judges to question of broader public benefits.

The Commission is concerned that the authorization process does not become too legalistic, and is attempting to speed up the process. The Commission stresses the difference between public and private benefits. Five criteria: lower prices, increased security of supply, net increase in number and/or quality of jobs, lower tariffs and bounties, and more favourable balance of payments have all been inconsistently applied case by case.

The Commission has been criticized by former members because it does not take steps to monitor whether claimed benefits actually accrue (e.g. to consumers) or whether there are unpredicted detrimental effects. More detailed conditions of authorization have been suggested, including an annual progress report by companies involved. Companies accuse TPC of being against industry rationalization in face of import competition.

Country: Australia

Type of Regulation: Consumer protection

Name of Agency or Department: Trade Practices Commission (TPC)

Program Title: Consumer protection

Relevant Legislation: Trade Practices Act, Part V

Purpose: Covers misleading advertising, supply of goods which do not comply with mandatory standards, and implied conditions and warranties.

Procedure to Achieve Compliance: The TPC supervises the Commonwealth/State Consumer Product Advisory Committee (CSCPAC), which was set up in 1977 to make recommendations to State, Territory and Commonwealth ministers about the need for compulsory standards. "Once a standard has been requested (by a member of CSCPAC, by the Consumer Standards Advisory Board of the SAA, by consumer organizations or industry groups, or by private individuals), CSCPAC evaluates the need for such a standard and seeks the views of interested parties on the proposed standard. CSCPAC always weighs the costs that compliance with standards imposes on an industry against the benefits to consumers in terms of reduced risk and improved product awareness and considers whether a voluntary approach would suffice" (Trade Practices Bulletin, p. 15). The TPC publicizes standards and bans in force under the Act, matters under consideration by CSCPAC, and develops guidenotes.

The product recall system is essentially voluntary, although under 1986 amendments, the Attorney-General reserves compulsory recall powers which can be exercised when the supplier has not taken sufficient action to prevent unsafe goods. Unsafe consumer goods can be banned for 18 months, which may be then re-imposed. Suppliers are required to notify Attorney-General about voluntary recalls. (On recent amendments, see Trade Practices Commission, Annual Report, 1985-86.)

Responsibility: The TPC reports to the Attorney-General.

Enforcement: Suppliers objecting to a ban or compulsory recall are entitled to a conference with TPC. Any party with a direct interest is entitled to attend. Following the conference, TPC can recommend to proceed with a ban or recall, to modify it, or not to proceed at all. The conference is not available when compulsory recall occurs because goods are an imminent risk to life or health.

Evaluation: The TPC is "the most litigation-oriented regulatory agency in Australia". However, TPC pursues only cases which are considered of national significance. Local cases are referred to State agencies. In 1983-84, of the 21,467 consumer protection inquiries or complaints, the TPC undertook "threshold inquiries" on 691, of which 16 led to court action.

CODE:AU-X-a-7

Country: Australia

Type of Regulation: Consumer protection

Name of Agency or Department: State Consumer Agencies (various)

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: South Australia: Consumer Tribunal Act, 1982; Victoria, Market Court Act, 1978.

Purpose: Consumer protection

Procedure for Achieving Compliance: The standard approach for most Australian consumer affairs agencies is summarized by Grabosky and Braithwaite (p. 81) as follows: "First they would prefer to prevent problems by consumer education rather than deal with them after they have occurred. Failing this, their second line of defence is mediation between complainants and individual traders and negotiation of solutions to groups of complaints with industry associations. Third, a failure to resolve complaints against a trader can lead to a trader being targeted for adverse publicity. The last resort is that action is taken against the trader in the courts."

Education and mediation of complaints are the primary roles. Agencies do monitor patterns of complaints to see if a whole group of complaints can be negotiated with a company or industry association. Should the trader prove intransigent, the consumer is advised to take the matter to a small claims court.

Departmental investigators may appear as witnesses. Victoria and Western Australia encourage development of self-regulatory codes and industry enforcement strategies in consultation with government.

South Australia also uses negative licensing--prohibiting unscrupulous traders from operating in an industry. This approach has less cost and less barriers to entry than a positive licensing scheme. Victoria has comparable approach under Market Court Act, 1978.

Responsibility: South Australia and New South Wales (NSW) are moving towards an innovative co-regulation scheme using Commercial Tribunal Acts.

Enforcement: Industry, consumer, government and other groups work together to develop a code of practice which is then enforced through the Commercial Tribunal.

This tribunal is like a small claims court and is not bound by the rules of evidence. In NSW the Commercial Tribunal also takes responsibility for a wide variety of occupational licensing (e.g. motor dealers, land valuers, builders, and credit providers).

Evaluation: Due to the large amount of written and unwritten complaints, most consumer affairs agencies are forced to be "reactive rather than proactive, and settlement-oriented rather than enforcement-oriented" (Grabosky and Braithwaite 1986, p. 85). When prosecution is pursued, fines tend to be low. The promise not to pursue prosecution is used to negotiate a quick settlement.

The South Australian Commissioner for Consumer Affairs is the only agency with a distinctively different, prosecutorial enforcement approach (it also has a written enforcement policy). First, there is a requirement that all reported offences are subject to "enforcement action" (even if only a warning letter), in order to show that the agency does not ignore any offences. Second, investigation and prosecution may be pursued even at the expense of settlement of a particular consumer's complaint, if it is considered to be in the wider consumer interest. There is a division of functions between officers who seek redress and those who investigate for purposes of prosecution, in order to avoid the company agreeing to settlement in return for no prosecution.

Code: AU-X-a-8

Country: Australia

Type of Regulation: Economic

Name of Agency or Department: Foreign Investment Review Board (FIRB)

Program Title: n/a

Initiation and Termination Dates: 1976

Relevant Legislation: Foreign Takeover Act, 1975; Statutory Rules 1975,No. 226; Statutory Rules 1976, No. 203

Purpose: To balance the economic benefits of direct foreign investment against the perceived social good of nationals owning, controlling and participating in the development of their country's resources. The policy has received bi-partisan support until the mid-1980s. Specific criteria are that foreign investment proposals are not against the national interest, and that Australian equity participation is at least 50 per cent.

Procedure to Achieve Compliance: Flexibility is the keyword for FIRB's mode of operation. This means an informal process of consultation with investors, and flexibility in the interpretation of guidelines. The Board actively publicizes the foreign investment policy and encourages early consultation with investors. The Board is also responsible for examing acquisitions under the Foreign Takeovers Act, which requires notification by non-residents of proposals to acquire or alter holdings in Australian companies. One key area for this kind of notification is mining exploration. In this way the Board can attach conditions to its approval, acting as a formal reminder that any future development will require a defined minimum of Australian participation.

Responsibility: see above

Enforcement: n/a

Evaluation: Statistical evidence supports the conclusion that the Board has successfully helped maintain Australian equity in mining development at the level of 50 per cent or more. Critics have claimed that the small proportion of proposals rejected by the Board indicates lack of success. However, Galligan (1987) argues that this small rejection rate is the result of extensive publicization and informal liaison which weeds out unacceptable proposals prior to formal submission.

"Australia's success in regulating direct foreign investment in its mining sector shows that a relatively small nation state that is heavily dependent on foreign development capital can nevertheless impose its own policy terms and conditions on multinational companies. Furthermore, it proves that having a federal system does not preclude the formulation and imposition of such a regulatory policy. The Australian foreign investment policy was successful because it had bi-partisan support, struck a moderate balance between foreign and local equity, was flexibly administered and yet had a specific 50 per cent guideline that could be enforced. ... And finally, as a consequence of all the above factors and because of the consortium method of project financing for large, high-risk projects, foreign investors regarded the FIRB policy as fair" (Galligan 1987).

Code: AU-X-a-9

Country: Australia

Type of Regulation: Transport (Shipping) Safety

Name of Agency or Department: Department of Transport

Program Title: Ship Safety Branch

Initiation and Termination Dates: n/a

Relevant Legislation: Not available

Purpose: Safety in ship design and maintenance.

Procedure to Achieve Compliance: Individual design approval in ship safety has existed for 100 years. Ship certification systems rely on approval of design at the drawing stage, surveillance during construction, and visual and non-destructive testing of the final product.

Responsibility: see above

Enforcement: The strongest deterrent against ships operating without a current survey certificate is that if ships are lost or damaged, they lose their insurance coverage if they don't have a current survey certificate. Random inspections at ports, and inspections prompted by complaints from seamen and waterside workers (dock workers) complement annual surveys. There are 100 regional surveyors.

Regulation of navigational practice directs enforcement at the master. A serious navigational offence can be subject to a Court of Marine Inquiry which can lead to masters or mates losing their livelihood through loss of certificates of competency. Fines may also be levied and deducted from a seaman's wage.

Evaluation: none provided

CODE: AU-X-a-10

Country: Australia

Type of Regulation: Medical Benefits

Name of Agency or Department: Health Insurance Commission.

Program Title: Surveillance and Investigation Division; Medical Division

Initiation and Termination Dates: 1973- (upgraded 1983)

Relevant Legislation: Health Insurance Act, 1973, Sect 129; Sect 19 (5)

Purpose: To detect and deter excessive medical servicing, defined as service not reasonably required for the adequate medical care of the patient. Overservicing is distinguished from outright fraud (e.g. invention of fictitious patients). Aim of program is to deter overservicing and fraud through a five year program. Primary emphasis is deterrence, secondary is restitution.

Procedure to Achieve Compliance: Detection is through: computer analysis of charging patterns for peer groups (so far more effectively used for GPs than specialists); information from payments division of Health Insurance Commission; complaints and information from the public (patients and staff).

Medical and pharmaceutical counsellors (trained with professional degrees) perform two roles: advice and education to physicians, through regular courtesy calls; and they seek explanations for aberrant prescribing or billing patterns. If fraud is suspected, counsellor turns case over to an investigator (separation of roles). The consequences of counsellor visits on billing and prescribing patterns is monitored to distinguish good performers from bad. It is believed the visits in themselves are cost-effective in preventing over-servicing.

Responsibility: Decision to pursue some form of prosecution is made by a central co-ordinating committee comprising representatives from Dept of Health, Health Insurance Commission, Director of Public Prosecutions, Australian Federal Police, and Dept of Veterans Affairs. A state-level coordinating committee reports to the federal committee.

Enforcement: Fraud is prosecuted through the courts, with the possibility of disqualification for 3 years. In addition to court penalties, Health Dept may also disqualify physician from Medicare benefits for 3 years, which the physician can ask the Minister to review.

Overservicing is referred to Medical Services Committees of Inquiry, consisting of 5 physicians, 4 appointed in consultation with Australian Medical Association (AMA), and one from government. They can recommend to Minister that doctor be any or all of: reprimanded, counselled, that their name be gazetted, that they be ordered to repay benefits. If benefits are repaid, a statement is tabled in parliament, and press tipped off. Orders for repayment can be appealed to Australian Adminstrative Tribunal, and usually are. Another avenue of enforcement is under Sect 19 (5), which denies payment of benefits for excessive health screening (e.g. blood tests). This can be enforced more rapidly.

Evaluation: Slowness of both the courts and part-time Committees of Inquiry (latter may take 2-3 years). Programme initially subject to criticism from AMA, which must be viewed in context of controversy over return to a broad public medical benefits scheme by Labour government, but AMA cooperation seems to be increasing. Future changes may include emphasis on education, peer pressure, improved procedures, and a new, faster tribunal.

Code: AU-X-b-1

Country: Australia

Type of Regulation: Authorization of self-regulatory schemes

Name of Agency or Department: Trade Practices Commission

Program Title: n/a

Initiation and Termination Dates: n/a

Relevant Legislation: Trade Practices Act, 1974

Purpose: To encourage self-regulatory schemes to minimize their anti-competitive effects and devote attention to the public as well as private benefits generated.

Procedure to Achieve Compliance: A pre-audit is used to determine the balance between public benefits and the resulting reduction in competition. The TPC assesses this balance but does not advise the parties on the most feasible ways to achieve such a balance. Applications for authorization are circulated to directly interested parties, who may make written submission before a draft written submission is rendered and circulated. Directly interested parties may request a conference, where a Commissioner attempts to negotiate a settlement. Further written comment is permitted for two weeks, and then a final decision circulated. All documents other than those defined as confidential are available on a public register. The final draft of the decision will approve or disapprove of the application and if approved may establish conditions. The final decision may be reviewed by the Trade Practices Tribunal. Authorization can be removed through a subsequent proceeding.

Responsibility: as above

Enforcement: Commission does not monitor compliance with conditions due to lack of resources, but complaints can lead to a proceeding to consider withdrawal of authorization.

Evaluation: The authorization process has increased the fairness of private enforcement systems. For example, the Royal Australian Institute for Architects were denied authorization until decisions on membership and discipline were subject to an independent arbitrator. Authorization for the Masterlocksmith Association was only granted after a certified non-member category was created and reasons for rejecting an application for certification were required to be given. This reduced barriers to entry. The authorization process has sought to equalize the bargaining power between parties--repairers and insurers, and real estate agents and their clients--so that settlements are negotiated rather than imposed on the weaker party (Annual Report, 1983-84).

The Commission has been criticized for authorizing a scheme for self-regulation of television advertising by the Media Council of Australia. Consumer groups have argued that they should be permitted to participate in the setting and enforcement of advertising codes (Blakeney 1985).

The Commission has undertaken a study of ten self-regulatory schemes which was to be published in 1987.

Code: AU-X-c-1

Country: Australia

Type of Regulation: Financial

Name of Agency or Department: National Companies and Securities Commission (NCSC)

Program Title: n/a

Initiation and Termination Dates: 1979

Relevant Legislation: National Companies and Securities Commission Act, 1979

Purpose: To supervise compliance with uniform state codes on companies (e.g. registration of companies), the securities industry, and takeovers (the latter is designed to ensure shareholders are provided with sufficient information, and that takeovers are effected quickly and at low cost).

Procedure to Achieve Compliance: The NCSC works in conjunction with state and territory corporate affairs commissions, to which it has been required to delegate most of its administrative "Among the regulatory tools available to the NCSC are the power to influence the conduct of a takeover, to freeze trading in the shares of a particular company, to cancel all trade and to reverse trading in specified shares.... The NCSC is empowered to hold hearings of an investigative nature in private.

Witnesses may be examined under oath, and their testimony is admissable in civil proceedings. Respondents, however, are not automatically entitled to be present throughout the hearing, or to cross-examine witnesses." Public hearings are held only for discussion of law reform proposals. The Commission has considerable flexibility of powers in the takeovers area, and is most active in this area over the other two.

The Commission has generally adopted a self-regulation approach, due in part to lack of resources e.g. in response to public calls for company accounts to be based on verifiable data and to reflect real values to creditors, regulators and accountants, the NCSC and its state delegates urged the creation of the Accounting Standards Review Board.

Responsibility: Half of the funding is from Commonwealth, half from states on a per capita basis. Setting of standards and their enforcement has thus been delegated to professional bodies. NCSC has 62 staff (of which only 6 in investigation) compared with about 1300 total in state commissions.

Enforcement: When it prosecutes, the NCSC prefers civil to criminal remedies because of higher potential and actual fines, less delay, and greater publicity. Investigation and enforcement comes about as a result of complaints or notification from liquidators (reactive rather than proactive).

Evaluation: Lack of resources and poor relations with state bodies are cited as problems. Because NCSC is restrictive in its release of information, more resources are devoted to dealing with Freedom of Information requests than to investigation. Senior officials feel self-regulation of stock exchanges is not adequate because they downplay wrong-doing and claim justice has been done, to avoid bad publicity.

APPENDIX 1

RELEVANT LEGISLATION

Code: US-E-a-1(i)

Country: US

Type of Regulation: Environment

Name of Agency: Department of the Interior; Office of Surface Mining (OSM)

Program Title: Abandoned Land Mine Program and Federal Permitting to Promote Environmental Control

Initiation and Termination Dates: 1977

Relevant Legislation: Surface Mining Control and Reclamation Act, Sect. 102(a)(g) 30 USC P.1253.

§ 1253. State programs

(a) Regulation of surface coal mining and reclamation operations; submittal to Secretary; time limit; demonstration of effectiveness

Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 1271 and 1273 of this title and subchapter IV of this chapter,

amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.];

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) Notice of disapproval

If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) Inability of State to take action

For the purposes of this section and section 1254 of this title, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under subchapters IV and VII of this chapter or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 1252 of this title, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 1254 of this title shall again be fully applicable.

(Pub. L. 95-87, title V, § 503, Aug. 3, 1977, 91 Stat. 470.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), referred to in subsec. (b)(2), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§ 1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 26 (§ 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended (42 U.S.C. 1857 et seq.), referred to in subsec. (b)(2), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1235, 1252, 1254, 1256, 1268, 1271, 1272, 1291, 1292, 1309 of this title.

US-E-a-1(ii)

shall submit to the Secretary, by the end of the eighteenth-month period beginning on August 3, 1977, a State program which demonstrates that such State has the capability of carrying out the provisions of this chapter and meeting its purposes through—

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this chapter, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this chapter;

(4) a State law which provides for the effective implementations, maintenance, and enforcement of a permit system, meeting the requirements of this subchapter for the regulations of surface coal mining and reclamation operations for coal on lands within the State;

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 1272 of this title provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and [3]

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this chapter.

(b) Approval of program

The Secretary shall not approve any State program submitted under this section until he has—

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175) [33 U.S.C. 1251 et seq.], and the Clean Air Act, as

Code: US-E-a-2 (i)

Country: US

Type of Regulation: Environment--Water Quality

Name of Agency: EPA

Program Title: Variance agreements--Thermal Pollution

Initiation and Termination Dates:

Relevant Legislation: Federal Law of Water Pollution Control 1976, Sect. 316(a); Clean Water Act 1977, 33 USC P. 1326(a) 1976; 33 USC P.1311(e) (b)(2)(A) (1982)

of chapter 51 and subchapter III of 53 of such title relating to classification General Schedule pay rates, the Commission shall have authority to enter into con- with private or public organizations who furnish the Commission with such admin- and technical personnel as may be nec- to carry out the purpose of this section. nnel furnished by such organizations this subsection are not, and shall not be red to be, Federal employees for any but in the performance of their shall be guided by the standards which to employees of the legislative branches rules 41 and 43 of the Senate and House esentatives, respectively.

rization of appropriation

is authorized to be appropriated, for carrying out this section, not to exceed ,000.

20, 1948, ch. 758, title III, § 315, as added 1972, Pub. L. 92-500, § 2, 86 Stat. 875, amended Dec. 28, 1973, Pub. L. 93-207, 87 Stat. 906; Jan. 2, 1975, Pub. L. 93-592, Stat. 1925; Mar. 23, 1976, Pub. L. 94-238, 250; H. Res. 988, Oct. 8, 1974; S. Res. 4, 1977.)

REFERENCES IN TEXT

expenses, including per diem in lieu of sub- authorized by law, referred to subsec. (f), refers to the allowances authorized by sec- of Title 5, Government Organization and

General Schedule, referred to in subsec. (g), is under section 5332 of Title 5, Government Or- and Employees.

AMENDMENTS

subsec. (h). Pub. L. 94-238 substituted for "$17,000,000".

subsec. (h). Pub. L. 93-592 substituted for "$15,000,000".

subsec. (g). Pub. L. 93-207 added subsec. (g). subsec. (g) redesignated (h).

(h). Pub. L. 93-207 redesignated former (f) as (h).

CHANGE OF NAME

mittee on Public Works of the Senate was and replaced by the Committee on Environ- Public Works of the Senate, effective Feb. See Rule XXV of the Standing Rules of the amended by Senate Resolution 4 (popularly the "Committee System Reorganization of 1977"), approved Feb. 4, 1977. mittee on Public Works of the House of tives was changed to the Committee on and Transportation of the House of effective Jan. 3, 1975, by House Reso- 3d Congress.

REFERRED TO IN OTHER SECTIONS

is referred to in sections 1311, 1376 of

al discharges

limitations that will assure protection gation of balanced, indigenous popula- shellfish, fish, and wildlife

ect to any point source otherwise the provisions of section 1311 of this on 1316 of this title, whenever the erator of any such source, after op

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portunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures

Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of title 26, whichever period ends first.

(June 30, 1948, ch. 758, title III, § 316, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1313 of this title.

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) Waiver for certain pollutants

(1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

Code: US-E-a-4 (i)

Country: US

Type of Regulation: Environmental/Safety and Health

Name of Agency: Office of Surface Mining

Program Title: Performance Standards

Initiation and Termination Dates: 1979

Relevant Legislation: Surface Mining Control and Reclamation Act. Revisions 1979. 30 USC 1251, 1265

§ 1251. Environmental protection standards

(a) Not later than the end of the ninety-day period immediately following August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering an interim regulatory procedure for surface coal mining and reclamation operations setting mining and reclamation performance standards based on and incorporating the provisions set out in section 1252(c) of this title. The issuance of the interim regulations shall be deemed not to be a major Federal action within the meaning of section 4332(2)(c) of title 42. Such regulations, which shall be concise and written in plain, understandable language shall not be promulgated and published by the Secretary until he has—

(A) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after such publication to submit written comments thereon;

(B) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175) [33 U.S.C. 1251 et seq.]; and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.]; and

(C) held at least one public hearing on the proposed regulations.

The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

(b) Not later than one year after August 3, 1977, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of this subchapter and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the subchapter. The Secretary shall promulgate these regulations, which shall be concise and written in plain, understandable language in accordance with the procedures in subsection (a) of this section.

(Pub. L. 95–87, title V, § 501, Aug. 3, 1977, 91 Stat. 467.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), referred to in subsec. (a)(B), is act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to chapter 23 (§ 1151 et seq.) of Title 33, Navigation and Navigable Waters, which was completely revised by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, and is classified generally to chapter 26 (§ 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended (42 U.S.C. 1857 et seq.), referred to in subsec. (a)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1211, 1254, 1265, 1266, 1276, 1292, 1298 of this title.

US-E-a-4(ii)

§ 1265. Environmental protection performance standards

(a) Permit requirement

Any permit issued under any approved State or Federal program pursuant to this chapter to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the regulatory authority shall promulgate.

(b) General standards

General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to—

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of Federal, State, or local law;

(3) except as provided in subsection (c) of this section with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter): *Provided, however,* That in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *And provided further,* That in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal

mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support over vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farm lands as identified in section 1257(b)(16) of this title to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the Secretary of Agriculture, and the operator shall, as a minimum, be required to—

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) replace and regrade the root zone material described in (B) above with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A);

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that—

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial [8] recreational, or domestic uses;

(9) conducting [9] any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety: *Provided*, That the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by—

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to—

(i) preventing or removing water from contact with toxic producing deposits;

(ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep [10] acid or other toxic drainage from entering ground and surface waters;

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[8] So in original. Probably should be followed by a comma.

[9] So in original. Probably should be "conduct".

[10] So in original. Probably should be "keeping".

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(B)(i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law;

(ii) constructing any siltation structures pursuant to subparagraph (B)(i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the regulatory authority;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) such other actions as the regulatory authority may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter;

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the regulatory authority shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if (A) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and (B) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to—

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority;

(E) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority and shall include such provisions as the Secretary shall promulgate.

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations: *Provided, however*, That where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the recla-

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mation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the regulatory authority finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this chapter;

(vi) provisions for the off-site storage of spoil will comply with paragraph (22);

(B) if the Secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subsection and section 1251 of this title, and has imposed such additional requirements as he deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the regulatory authority pursuant to section 1259(b) of this title shall be for the duration of the underground mining operations and until the requirements of this subsection and section 1269 of this title have been fully complied with.[11]

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (19) above, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work: *Provided*, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use: *Provided further*, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above;

(21) protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that—

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the regulatory authority, the spoil could be placed in compliance with all the requirements of this chapter, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides

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[11] So in original. The period probably should be a semicolon.

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additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this chapter are met.[12]

(23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site; and [13]

(24) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the regulatory authority shall determine shall be retained in place as a barrier to slides and erosion.

(c) Procedures; exception to original contour restoration requirements

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit surface mining operations for the purposes set forth in paragraph (3) of this subsection.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b)(3) or (d)(2) and (3) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subsection (c)(4)(A) hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed or [14] the postmining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subsection (c)(2) of this section where—

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses, and existing State and local land use plans and programs;

(D) the regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any State or Federal agency which the regulatory agency, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use;

(E) all other requirements of this chapter will be met.

(4) In granting any permit pursuant to this subsection the regulatory authority shall require that—

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: *Provided*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this chapter;[15]

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[12] So in original. The Period probably should be a semicolon.

[13] So in original. The word "and" probably should appear at end of par. (24).

[14] So in original. Probably should be "for".

[15] So in original. The semicolon probably should be a period.

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(5) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) Steep-slope surface coal mining standards

The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section: *Provided, however,* That the provisions of this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of subsection (c) hereof:

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut: *Provided,* That spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of subsection (b)(3) or (d)(2) of this section shall be permanently stored pursuant to subsection (b)(22) of this section.

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the regulatory authority finds that such disturbance will facilitate compliance with the environmental protection standards of this section: *Provided, however,* That the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(4) For the purposes of this subsection (d), the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

(e) Variances to original contour restoration requirements

(1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

(3)(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) after approval of the appropriate State environmental agencies, the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection the regulatory authority shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this chapter, and all spoil placement off the mine bench must comply with subsection (b)(22) of this section.

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(f) Standards and criteria for coal mine waste piles

The Secretary, with the written concurrence of the Chief of Engineers, shall establish within one hundred and thirty-five days from August 3, 1977, standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in subsection (b)(13) of this section and section 1266(b)(5) of this title. Such standards and criteria shall conform to the standards and criteria used by the Chief of Engineers to insure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon comple-

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tion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

(Pub. L. 95-87, title V, § 515, Aug. 3, 1977, 91 Stat. 486.)

REFERENCES IN TEXT

Public Law 83-566, referred to in subsec. (b)(8)(B), is act Aug. 4, 1954, ch. 656, 68 Stat. 666, as amended, known as the Watershed Protection and Flood Prevention Act, which is classified generally to chapter 18 (§ 1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1257, 1258, 1259, 1260, 1262, 1266, 1269, 1276, 1279, 1291, 1300, 1301 of this title.

Code: US-E-a-5 (i)

Country: US

Type of Regulation: Environmental

Name of Agency or Department: EPA

Program Title: New Source Performance Standards

Initiation and Termination Dates:

Relevant Legislation: Clean Air Act; 42 USC Section 7411 Supp III, 1979

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means—

(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) of this section applies, a standard—

(i) establishing allowable emission limitations for such category of sources, and

(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emis-

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consistent with the purposes of such Act [this chapter]."

FEDERAL ENERGY ADMINISTRATOR

The "Federal Energy Administrator", for purposes of this chapter, to mean the Administrator of the Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, set out as section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until the Federal Energy Administrator takes office and after the Federal Energy Administration ceases to exist, see section 790 of Title 15, Commerce and Trade.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95-95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6211, 6215, [illegible], 7407, 7411, 7413, 7414, 7415, 7419, 7420, 7425, [illegible], 7475, 7476, 7491, 7501, 7502, 7504, 7506, 7545, [illegible], 7613, 7619, 8374, 8375 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means—

(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) of this section applies, a standard—

(i) establishing allowable emission limitations for such category of sources, and

(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion,

(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) of this section applies, a standard such as that referred to in subparagraph (A)(i); and

(C) with respect to any air pollutant emitted from a particular source to which subsection (d) of this section applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2) of this section) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. For the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means—

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(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publications, such standards with such modifications as he deems appropriate. The Administrator shall, at least every four years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

(2) The Administrator may distinguish among classes, types and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b)(1)(A) of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations listing under subsection (b)(1)(A) of this section the categories of major stationary sources which are not on August 7, 1977, included on the list required under subsection (b)(1)(A) of this section. The Administrator shall promulgate regulations establishing standards of performance for the percentage of such categories of sources set forth in the following table before the expiration of the corresponding period set forth in such table:

Percentage of source categories required to be listed for which standards must be established:	Period by which standards must be promulgated after date list is required to be promulgated:
25	2 years.
75	3 years.
100	4 years.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 7412 of this title, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(8) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the

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proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

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(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(f), 85 Stat. 464; Aug. 7, 1977, Pub. L. 95-95, title I, § 109(a)-(d)(1), (e), (f), title IV, § 401(b), 91 Stat. 697-703, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(7)-(9), 91 Stat. 1399; Nov. 9, 1978, Pub. L. 95-623, § 13(a), 92 Stat. 3457.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

CODIFICATION

Section was formerly classified to section 1857c-6 of this title.

PRIOR PROVISIONS

A prior section 111 of Act July 14, 1955, was renumbered section 118 by Pub. L. 91-604, and is set out as section 7418 of this title.

AMENDMENTS

1978—Subsec. (d)(1)(A)(ii). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (g)(4)(B). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (h)(5). Pub. L. 95-623, § 13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95-623, § 13(a)(3), substituted in pars. (1)(A) and (2)(A) "standards under this section" and "under this section" for "standards under subsection (b) of this section" and "under subsection (b) of this section".

1977—Subsec. (a)(1). Pub. L. 95-95, § 109(c)(1)(A), added subpars. (A), (B), and (C), substituted "For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect" for "a standard for emissions of air pollutants which reflects", "and the percentage reduction achievable" for "achievable", and "technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)" for "system of emission reduction which (taking into account the cost of achieving such reduction)" in the existing provisions, and added provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95-95, § 109(c)(1)(B), added subsec. (a)(7), defining "technological system of continuous emission reduction".

Subsec. (a)(8). Pub. L. 95-190, § 14(a)(7), redesignated subsec. (a)(7) as (a)(8), which for purposes of codification had already been redesignated as (a)(8), thereby requiring no further change in text.

Pub. L. 95-95, § 109(f), added a subsec. (a)(7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4), which was designated as (a)(8) for purposes of codification.

Subsec. (b)(1)(A). Pub. L. 95-95, § 401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95-95, § 109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95-95, § 109(c)(3), added subsec. (b)(5) and (6).

Subsec. (c)(1). Pub. L. 95-95, § 109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95-95, § 109(b)(1), substituted "standards of performance" for "emission standards" and added provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95-95, § 109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95-95, § 109(a), added subsecs. (f) to (i).

Subsec. (j). Pub. L. 95-190, § 14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in

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par. (2). Former subsec. (j) added by Pub. L. 95-95, § 109(e), which related to compliance with applicable standards of performance, was struck out.

Subsec. (k). Pub. L. 95-190, § 14(a)(8), redesignated subsec. (k) as (j).

Pub. L. 95-95, § 109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92-157 substituted in first sentence "publish proposed" for "propose".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Transfer of Functions

Enforcement functions of Administrator or other official in the Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7410, 7412, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7425, 7475, 7479, 7501, 7604, 7607, 7608, 7616, 7617, 7618 of this title.

§ 7412. National emission standards for hazardous air pollutants

(a) Definitions

For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 7411(a) of this title.

(b) List of hazardous air pollutants; emission standards; pollution control techniques

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutant subject to the provisions of this section.

(c) Prohibited acts; exemption

(1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for

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Subsec. (h). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95-95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95-95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95-190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95-95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted "will enable such source" for "at such source will enable it".

1974—Subsec. (a)(3). Pub. L. 93-319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93-319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

CHANGE OF NAME

The Committee on Public Works of the Senate was abolished and replaced by the Committee on Environment and Public Works of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95-95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SAVINGS PROVISIONS

Section 16 of Pub. L. 91-604 provided that:

"(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91-604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

"(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter]."

FEDERAL ENERGY ADMINISTRATOR

The "Federal Energy Administrator", for purposes of this chapter, to mean the Administrator of the Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until the Federal Energy Administrator takes office and after the Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6211, 6215, 7405, 7407, 7411, 7413, 7414, 7415, 7419, 7420, 7425, 7426, 7475, 7476, 7491, 7501, 7502, 7504, 7506, 7545, 7607, 7613, 7619, 8374, 8375, 9601 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means—

(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) of this section applies, a standard—

(i) establishing allowable emission limitations for such category of sources, and

(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emis-

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sions which would have resulted from the use of fuels which are not subject to treatment prior to combustion,

(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) of this section applies, a standard such as that referred to in subparagraph (A)(i); and

(C) with respect to any air pollutant emitted from a particular source to which subsection (d) of this section applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2) of this section) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. For the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every four years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) of this section shall be promulgated not later than one year after August 7, 1977. Any

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new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b)(1)(A) of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations listing under subsection (b)(1)(A) of this section the categories of major stationary sources which are not on August 7, 1977, included on the list required under subsection (b)(1)(A) of this section. The Administrator shall promulgate regulations establishing standards of performance for the percentage of such categories of sources set forth in the following table before the expiration of the corresponding period set forth in such table:

Percentage of source categories required to be listed for which standards must be established:	Period by which standards must be promulgated after date list is required to be promulgated:
25	2 years.
75	3 years.
100	4 years.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

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(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 7412 of this title, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(8) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under

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the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(f), 85 Stat. 464; Aug. 7, 1977, Pub. L. 95-95, title I, § 109(a)-(d)(1), (e), (f), title IV, § 401(b), 91 Stat. 697-703, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(7)-(9), 91 Stat. 1399; Nov. 9, 1978, Pub. L. 95-623, § 13(a), 92 Stat. 3457.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

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CODIFICATION

Section was formerly classified to section 1857c-6 of this title.

PRIOR PROVISIONS

A prior section 111 of act July 14, 1955, was renumbered section 118 by Pub. L. 91-604, and is classified to section 7418 of this title.

AMENDMENTS

1978—Subsec. (d)(1)(A)(ii). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (g)(4)(B). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (h)(5). Pub. L. 95-623, § 13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95-623, § 13(a)(3), substituted in pars. (1)(A) and (2)(A) "standards under this section" and "under this section" for "standards under subsection (b) of this section" and "under subsection (b) of this section".

1977—Subsec. (a)(1). Pub. L. 95-95, § 109(c)(1)(A), added subpars. (A), (B), and (C), substituted "For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect" for "a standard for emissions of air pollutants which reflects", "and the percentage reduction achievable" for "achievable", and "technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)" for "system of emission reduction which (taking into account the cost of achieving such reduction)" in the existing provisions, and added provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95-95, § 109(c)(1)(B), added par. (7), defining "technological system of continuous emission reduction".

Subsec. (a)(8). Pub. L. 95-190, § 14(a)(7), redesignated par. (7) as (8), which for purposes of codification had already been redesignated as par. (8), thereby requiring no further change in text.

Pub. L. 95-95, § 109(f), added a par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4), which was designated as par. (8) for purposes of codification.

Subsec. (b)(1)(A). Pub. L. 95-95, § 401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95-95, § 109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95-95, § 109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95-95, § 109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95-95, § 109(b)(1), substituted "standards of performance" for "emission standards" and added provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95-95, § 109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95-95, § 109(a), added subsecs. (f) to (i).

Subsec. (j). Pub. L. 95-190, § 14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95-95, § 109(e), which related to compliance with applicable standards of performance, was struck out.

Subsec. (k). Pub. L. 95-190, § 14(a)(8), redesignated subsec. (k) as (j).

Pub. L. 95-95, § 109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92-157 substituted in first sentence "publish proposed" for "propose".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in the Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees.

EXEMPTION FOR FORT ALLEN IN PUERTO RICO

For provisions relating to the prohibition of an exemption from this section for Fort Allen in Puerto Rico, in its use as temporary housing for Haitian refugees, see section 1-102 of Ex. Ord. No. 12327, Oct. 1, 1981, 46 F.R. 48893, set out as a note under section 2601 of Title 22, Foreign Relations and Intercourse.

Country: US

Code: US-E-a-6 (i)

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Permit Requirements

Initiation and Termination Dates: 1972

Relevant Legislation: Clean Water Act 33 Usc Section 1311(b)

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted

him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under

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section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(*l*) Irrigation return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(June 30, 1948, ch. 758, title IV, § 402, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 880, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, 91 Stat. 1577, 1588, 1591, 1599, 1600.)

Amendments

1977—Subsec. (a)(5). Pub. L. 95-217, § 50, substituted "section 1314(*l*)(2)" for "section 1314(h)(2)".

Subsec. (b). Pub. L. 95-217, § 50, substituted in the material preceding par. (1) "subsection (*l*)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (b)(8). Pub. L. 95-217, § 54(c)(1), added reference to the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.

Subsec. (c)(1), (2). Pub. L. 95-217, § 50, substituted "section 1314(*l*)(2)" for "section 1314(h)(2)".

Subsec. (d)(2). Pub. L. 95-217, § 65(b), added provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.

Subsec. (d)(4). Pub. L. 95-217, § 65(a), added par. (4).

Subsec. (e). Pub. L. 95-217, § 50, substituted "subsection (*l*)(2) of section 1314" for "subsection (h)(2) of section 1314".

Subsec. (h). Pub. L. 95-217, § 66, substituted "where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit," for "where no State program is approved,".

Subsec. (*l*). Pub. L. 95-217, § 33(c), added subsec. (*l*).

Transfer of Functions

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to compliance with national pollutant discharge elimination system permits with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

Allowable Delay in Modifying Existing Approved State Permit Programs To Conform to 1977 Amendment

Section 54(c)(2) of Pub. L. 95-217 provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub. L. 95-217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

Section Referred to in Other Sections

This section is referred to in sections 1251, 1284, 1285, 1288, 1311, 1314, 1318, 1319, 1321, 1323, 1328, 1341, 1343, 1344, 1345, 1365, 1369, 1371, 1373 of this title; title 42 sections 6903, 9601.

Code: US-E-a-7 (i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Wastewater Discharges--Self-Monitoring

Initiation and Termination Dates:

Relevant Legislation: Clean Water Act eg. 33 USC Section 1311(h)(3)

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

Code: US-E-a-8 (i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Categorical Standards and Variance: Water Pollution

Initiation and Termination Dates: 1977

Relevant Legislation: Clean Water Act, 1977, Amend. 1982. 33 USC Section 1316 (a)(1)(1982); 1311 (b)(1)(a); 1311 (b)(2)(a); 1314 (b)(1); 1314 (b)(2); 1311 (c); 1314 (b)(4).

SUBCHAPTER III—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations

(a) Illegality of pollutant discharges except in compliance with law

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) Waiver for certain pollutants

(1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

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§ 1314. Information and guidelines

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and prac-

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§ 1314. Information and guidelines

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and prac-

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tices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 1311(b)(2)(E) of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) Pollution discharge elimination procedures

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques; innovative and alternative wastewater treatment processes; facilities deemed equivalent of secondary treatment

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after December 27, 1977, guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objectives of this chapter, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

(e) Best management practices for industry

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 1317(a)(1) or 1321 of this title, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 1311, 1312, 1316, 1317, or 1343 of this title, as

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter.

(June 30, 1948, ch. 758, title III, § 305, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 853, and amended Dec. 27, 1977, Pub. L. 95-217, § 52, 91 Stat. 1589.)

CODIFICATION

Subsec. (a) authorized the Administrator, in cooperation with the States and Federal agencies, to prepare a report describing the specific quality, during 1973, of all navigable waters and waters of the contiguous zone, including an inventory of all point sources of discharge of pollutants into these waters, and identifying those navigable waters capable of supporting fish and wildlife populations and allowing recreational activities, those which could reasonably be expected to attain this level by 1977 or 1983, and those which could attain this level sooner, and submit this report to Congress on or before Jan. 1, 1974.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-217, § 52(1), substituted "April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter" for "January 1, 1975, and shall bring up to date each year thereafter" in the provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 95-217, § 52(2), substituted "on or before October 1, 1975, and October 1, 1976, and biennially thereafter" for "on or before October 1, 1975, and annually thereafter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1314, 1317, 1319, 1323, 1326, 1341, 1342, 1365, 1367, 1369, 1371, 1374 of this title.

§ 1316. National standards of performance

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources

(1)(A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality, environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

Code: US-E-a-10 (i)

Country: US

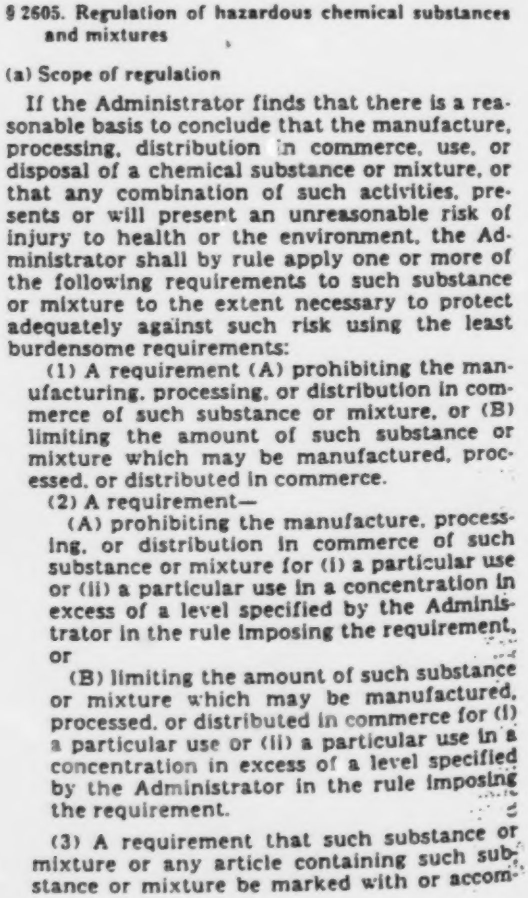
Type of Regulation: Health/Environmental--Toxic Substances

Name of Agency: EPA

Program Title: Permit Issuing/Direct Regulation

Initiation and Termination Dates: 1976

Relevant Legislation: Toxic Substances Control Act 1976 15 USC Par. 2601-2629 (1976); Section 112 Clean Air Act; Section 6(b) OSH Act; Section 409 Federal Food, Drug, and Cosmetic Act; Section 3 FIFRA.



§ 2605. Regulation of hazardous chemical substances and mixtures

(a) Scope of regulation

If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accom-

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panied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

(b) Quality control

If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) Promulgation of subsection (a) rules

(1) In promulgating any rule under subsection (a) of this section with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) of this section to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this chapter. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this chapter and under such law (or laws), and (iii) the relative efficiency of actions under this chapter and under such law (or laws) to protect against such risk of injury.

(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 2618(a) of this title), and (E) make and publish with the rule the finding described in subsection (a) of this section.

(3) Informal hearings required by paragraph (2)(C) shall be conducted by the Administrator in accordance with the following requirements:

(A) Subject to subparagraph (B), an interested person is entitled— ,

(i) to present such person's position orally or by documentary submissions (or both), and

(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B)(ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.

(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be entitled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.

(C)(i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.

(4)(A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) of this section to any person—

(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and

(ii) if—

(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.

In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.

(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

(i) would be regulated by the proposed rule, or

(ii) represent persons who would be so regulated,

may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(5) Paragraph (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to,

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a rule promulgated under subsection (a) of this section.

(d) Effective date

(1) The Administrator shall specify in any rule under subsection (a) of this section the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) of this section to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 2606 of this title granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c) of this section, for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c) of this section.

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl.

(Pub. L. 94-469, § 6, Oct. 11, 1976, 90 Stat. 2020.)

Code: US-E-a-18 (i)

Country: US

Type of Regulation: Environmental

Name of Agency: Congress

Program Title: Mobile Source Emissions Control/Motor Vehicles

Initiation and Termination Dates: 1970, Amendments, 1977

Relevant Legislation: Clean Air Act, 1970, 1977. Title II; 42 USC 7521, 7524

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A)(i) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1979. Such regulations applicable to such pollutants from such classes or categories of vehicles or engines manufactured during model years 1979 through 1982 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(ii) Unless a different standard is temporarily promulgated as provided in subparagraph (B) or unless the standard is changed as provided in subparagraph (E), regulations under paragraph (1) of this subsection applicable to emissions from vehicles or engines manufactured during and after model year—

(I) 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent, and

(II) 1985, in the case of oxides of nitrogen, shall contain standards which require a reduction of at least 75 per cent,

from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year.

(iii) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of particulate matter from classes or categories of vehicles manufactured during and after model year 1981 (or during any earlier model year, if practicable). Such regulations shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Such standards shall be promulgated and shall take effect as expeditiously as practicable taking into account the period necessary for compliance.

(iv) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle

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weight, horsepower, or such other factors as may be appropriate.

(v) For the purpose of this paragraph, the term "baseline model year" means, with respect to any pollutant emitted from any vehicle or engine, or class or category thereof, the model year immediately preceding the model year in which Federal standards applicable to such vehicle or engine, or class or category thereof, first applied with respect to such pollutant.

(B) During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year.

(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i).

(D) A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.

(E)(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.

(F) For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any

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unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to standards prescribed under this subsection without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

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(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply.

(5)(A) At any time after August 31, 1978, any manufacturer may file an application requesting the waiver for model years 1981 and 1982 of the effective date of the emission standard required by paragraph (1)(A) for carbon monoxide applicable to any model (as determined by the Administration) of light-duty motor vehicles and engines manufactured in such model years. The Administrator shall make his determination with respect to any such application within sixty days after such application is filed with respect to such model. If he determines, in accordance with the provisions of this paragraph, that such waiver should be granted, he shall simultaneously with such determination prescribe by regulation emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide from such model of vehicles or engines manufactured during model years 1981 and 1982.

(B) Any standards prescribed under this paragraph shall not permit emissions of carbon monoxide from vehicles and engines to which such waiver applies to exceed 7.0 grams per vehicle per mile.

(C) Within sixty days after receipt of the application for any such waiver and after public hearing, the Administrator shall issue a decision granting or refusing such waiver. The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) of this section and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

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(6)(A) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(i) that such waiver would not endanger public health,

(ii) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(iii) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(B) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not to exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles and engines manufactured by such manufacturer during the four model year period beginning with the model year 1981 if the manufacturer can show that such waiver is necessary to permit the use of diesel engine technology in such class or category of vehicles or engines. Such waiver may be granted if the Administrator determines—

(i) that such waiver will not endanger public health,

(ii) that such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], and

(iii) that the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] at the expiration of the waiver.

(7) The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

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(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

(f) High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93-319, § 5, 88 Stat. 258; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 201, 202(b), 213(b), 214(a), 215-217, 224(a), (b), (g), title IV, 401(d), 91 Stat. 751-753, 758-761, 765, 767, 769, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(60)-(65), (b)(5), 91 Stat. 1403, 1405.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (b)(6)(A)(iii), (B)(ii), (iii), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f-1 of this title.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190, § 14(a)(60), restructured subsec. by providing for designation of par. to precede "The Administrator" in place of "Except as".

Pub. L. 95-95, § 401(d)(1), substituted "Except as otherwise provided in subsection (b) of this section the Administrator" for "The Administrator", "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare", and "useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices" for "useful life (as determined under subsection (d) of this section) whether such vehicles and engines are designed as complete systems or incorporated devices".

Subsec. (a)(2). Pub. L. 95-95, § 214(a), substituted "prescribed under paragraph (1) of this subsection" for "prescribed under this subsection".

Subsec. (a)(3). Pub. L. 95-95, § 224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95-190, § 14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted "from any" for "of from any".

Subsec. (a)(3)(E). Pub. L. 95-190, § 14(a)(63), substituted "1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen" for "1979,".

Subsec. (a)(4). Pub. L. 95-95, § 214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95-95, § 215, added par. (5).

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Subsec. (a)(6). Pub. L. 95-95, § 216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95-95, § 201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted "model year 1980" for "model year 1977" in the provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and added provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95-190, § 14(a)(64), (65), substituted "calendar year 1976" for "model year 1976" and in cl. (i) substituted "other" for "United States".

Pub. L. 95-95, § 201(b), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and added provisions directing the Administrator to prescribe separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95-95, § 217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95-95, § 224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95-95, § 201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95-95, § 201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95-95, § 202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95-95, § 224(g), as amended by Pub. L. 95-190, § 14(b)(5) to correct typographical error in directory language, added "(other than motorcycles or motorcycle engines)" after "motor vehicle or motor vehicle engine".

Subsec. (d)(3). Pub. L. 95-95, § 224(g), added par. (3).

Subsec. (e). Pub. L. 95-95, § 401(d)(2), substituted "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger" for "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers".

Subsec. (f). Pub. L. 95-95, § 213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93-319, § 5(a), substituted "model year 1977" for "model year 1975" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and added provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93-319, § 5(b), substituted "model year 1978" for "model year 1976" in the provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and added provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93-319, § 5(c), (d), substituted in subpar. (A), "At any time after January 1, 1975" for "At any time after January 1, 1972", "with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977" for "with respect to such manufacturer", "sixty days" for "60 days", "paragraph (1)(A) of this subsection" for "paragraph (1)(A)", and "vehicles and engines manufactured during model year 1977" for "vehicles and engines manufactured during model year 1975", redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a). Pub. L. 91-604 redesignated existing provisions as par. (1) and, in par. (1) as so redesignated, substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91-604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91-604 added subsecs. (c) to (e).

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

~~Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.~~

~~MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS~~

~~All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.~~

~~STUDY ON OXIDES OF NITROGEN FROM LIGHT-DUTY VEHICLES~~

~~Section 202(a) of Pub. L. 95-95 provided that the Administrator of the Environmental Protection Agency conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light-duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare and that the Administrator submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.~~

STUDY OF CARBON MONOXIDE INTRUSION INTO SUSTAINED-USE VEHICLES

Section 226 of Pub. L. 95-95 provided that the Administrator, in conjunction with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use

Code: US-E-a-19(i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Emission Limits

Initiation and Termination Dates: 1970, Amendments, 1977

Relevant Legislation: Clean Air Act, 1970, 1977; 42 USC, 7503(2); 7475(a)(4); 7521(a)(3)(A)(i-iii)

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(c) Indian reservations

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e) of this section.

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within ‘ supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(July 14, 1955, ch. 360, title I, § 164, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 733, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(42), (43), 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (b)(2). Pub. L. 95-190, § 14(a)(42) added "or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of thi section." following "this section".

Subsec. (e). Pub. L. 95-190, § 14(a)(43), added "an" following "If any State affected by the redesignation of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7472, 7478 o this title.

§ 7475. Preconstruction requirements

(a) Major emitting facilities on which construction i commenced

No major emitting facility on which construction is commenced after August 7, 1977, may b constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

(5) the provisions of subsection (d) of this section with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions

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STATE IMPLEMENTATION PLAN REVISION

Section 129(c) of Pub. L. 95-95, as amended by Pub. L. 95-190, § 14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: "Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7501, 7503, 7506 of this title.

§ 7503. Permit requirements

The permit program required by section 7502(b)(6) of this title shall provide that permits to construct and operate may be issued if—

(1) the permitting agency determines that—

(A) by the time the source is to commence operation, total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources allowed under the applicable implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(b) of this title;

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and

(4) the applicable implementation plan is being carried out for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1)(A) shall be legally binding before such permit may be issued.

(July 14, 1955, ch. 360, title I, § 173, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 748, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(57), (58), 91 Stat. 1403.)

AMENDMENTS

1977—Par. (1)(A). Pub. L. 95-190, § 14(a)(57), added "or modified" following "from new" and "applicable" preceding "implementation plan", and substituted "source" for "facility" wherever appearing therein.

Par. (4). Pub. L. 95-190, § 14(a)(58), added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7502 of this title.

§ 7504. Planning procedures

(a) Preparation of implementation plan by designated organization

Within six months after August 7, 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after August 7, 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

(b) Coordination of plan preparation

The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23 and the air

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AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190 added "national" preceding "primary".

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

(July 14, 1955, ch. 360, title I, § 177, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 750.)

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 750.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7414, 7613 of this title.

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A)(i) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1979. Such regulations applicable to such pollutants from such classes or categories of vehicles or engines manufactured during model years 1979 through 1982 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(ii) Unless a different standard is temporarily promulgated as provided in subparagraph (B) or unless the standard is changed as provided in subparagraph (E), regulations under paragraph (1) of this subsection applicable to emissions from vehicles or engines manufactured during and after model year—

(I) 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent, and

(II) 1985, in the case of oxides of nitrogen, shall contain standards which require a reduction of at least 75 per cent,

from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year.

(iii) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of particulate matter from classes or categories of vehicles manufactured during and after model year 1981 (or during any earlier model year, if practicable). Such regulations shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Such standards shall be promulgated and shall take effect as expeditiously as practicable taking into account the period necessary for compliance.

(iv) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, or such other factors as may be appropriate.

(v) For the purpose of this paragraph, the term "baseline model year" means, with respect to any pollutant emitted from any vehicle or engine, or class or category thereof, the model year immediately preceding the model year in which Federal standards applicable to such vehicle or engine, or class or category thereof, first applied with respect to such pollutant.

(B) During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year.

(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i).

(D) A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.

(E)(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.

(F) For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any

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unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to standards prescribed under this subsection without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onbo [illegible] n technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

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(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply.

(5)(A) At any time after August 31, 1978, any manufacturer may file an application requesting the waiver for model years 1981 and 1982 of the effective date of the emission standard required by paragraph (1)(A) for carbon monoxide applicable to any model (as determined by the Administration) of light-duty motor vehicles and engines manufactured in such model years. The Administrator shall make his determination with respect to any such application within sixty days after such application is filed with respect to such model. If he determines, in accordance with the provisions of this paragraph, that such waiver should be granted, he shall simultaneously with such determination prescribe by regulation emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide from such model of vehicles or engines manufactured during model years 1981 and 1982.

(B) Any standards prescribed under this paragraph shall not permit emissions of carbon monoxide from vehicles and engines to which such waiver applies to exceed 7.0 grams per vehicle per mile.

(C) Within sixty days after receipt of the application for any such waiver and after public hearing, the Administrator shall issue a decision granting or refusing such waiver. The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) of this section and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

(6)(A) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(i) that such waiver would not endanger public health,

(ii) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(iii) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(B) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not to exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles and engines manufactured by such manufacturer during the four model year period beginning with the model year 1981 if the manufacturer can show that such waiver is necessary to permit the use of diesel engine technology in such class or category of vehicles or engines. Such waiver may be granted if the Administrator determines—

(i) that such waiver will not endanger public health,

(ii) that such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], and

(iii) that the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] at the expiration of the waiver.

(7) The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

(f) High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93-319, § 5, 88 Stat. 258; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 201, 202(b), 213(b), 214(a), 215-217, 224(a), (b), (g), title IV, 401(d), 91 Stat. 751-753, 758-761, 765, 767, 769, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(60)-(65), (b)(5), 91 Stat. 1403, 1405.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (b)(6)(A)(iii), (B)(ii), (iii), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Code: US-E-b-1 (i)

Country: US

Type of Regulation: Enviornmental

Name of Agency: EPA

Program Title: Regulated Rulemaking--Penalty Assessment

Initiation and Termination Dates: 1982

Relevant Legislation: Toxic Substances Control Act (TSCA) Par. 16(a) 15 USC Par. 2615(a) (1982)

§ 2615. Penalties

(a) Civil

(1) Any person who violates a provision of section 2614 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 of this title.

(2)(A) A civil penalty for a violation of section section 2614 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

Any person who knowingly or willfully violates any provision of section 2614 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year, or both.

(Pub. L. 94-469, § 16, Oct. 11, 1976, 90 Stat. 2037.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2619, 2629 of this title.

Code: US-E-b-2(i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Administrative Order--Hazardous Waste/Binding Arbitration

Initiation and Termination Dates: 1980

Relevant Legislation: Comprehensive Environmental Response Compensation and Liability Act: Superfund 42 USC Par. 9608(b)(c) CERCLA Sec. 112(b)(2)-(3) Superfund Amendments and Reauthorization Act. Publ. L No. 99-499, Par. 122(h)(2)(1986) Sect. 107 CERCLA.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of $300 per gross ton (or for a vessel carrying hazardous substances as cargo, or $5,000,000, whichever is greater). Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of title 46 of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements over a period of not less than three and no more than six years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

Code: US-E-b-4(1)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: State Implementation Plans (SIP)

Initiation and Termination Dates: June 23, 1982-

Relevant Legislation: 47 FR 27073: Clean Air Act 42 USC Section 7410

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan, or any portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) except as may be provided in subparagraph (I)(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D);

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection; (v) for authority comparable to that in section 7603 of this title, and adequate contingency plans to implement such authority; and (vi) requirements that the State comply with the requirements respecting State boards under section 7428 of this title;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standards; or (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977;

(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 7501(2) of this title) to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

(J) it meets the requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), part C (relating to prevention of significant deterioration of air quality and visibility protection); and

(K) it requires the owner or operator of each major stationary source to pay to the permitting authority as a condition of any permit required under this chapter a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, whether before or after August 7, 1977, the reasonable costs (incurred after such date) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action).

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the at-

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tainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(D) Any applicable implementation plan for which an attainment date later than December 31, 1982, is provided pursuant to section 7502(a)(2) of this title shall be revised by July 1, 1979, to include the comprehensive measures and requirements referred to in subsection (c)(5)(B) of this section.

(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 7411 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) of this section respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d) of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18

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months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) the State fails to submit an implementation plan which meets the requirements of this section,

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section. Notwithstanding the preceding sentence, any portion of a plan relating to any measure described in the first sentence of section 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title shall not be required to be promulgated before the date eight months after such date required for submission.

(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate not later than three months after June 22, 1974, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any

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part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) In the case of any applicable implementation plan containing measures requiring—

(A) retrofits on other than commercially owned in-use vehicles,

(B) gas rationing which the Administrator finds would have seriously disruptive and widespread economic or social effects, or

(C) the reduction of the supply of on-street parking spaces,

the Governor of the State may, after notice and opportunity for public hearing, temporarily suspend such measures notwithstanding the requirements of this section until January 1, 1979, or the date on which a plan revision under subsection (a)(2)(I) of this section is submitted, whichever is earlier. No such suspension shall be granted unless the State agrees to prepare, adopt, and submit such plan revision as determined by the Administrator.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures (including the written evidence required by part D), to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d) Applicable implementation plan

For purposes of this chapter, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) of this section or promulgated under subsection (c) of this section and which implements the requirements of this section.

(e) Extension of time period for attainment of national primary ambient air quality standard in implementation plan; procedure; approval of extension by Administrator

(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) of this section for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan adopted by the State may be issued by the Governor of any State covered by the President's determination

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under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title, as in effect before August 7, 1977, or section 7413(d) of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within the required four month period, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title as in effect before August 7, 1977, or under section 7413(d) of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Annual publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than one year after August 7, 1977, and annually thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents. Each such document shall be revised as frequently as practicable but not less often than annually.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source

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will be in compliance with all other requirements of this chapter.

(July 14, 1955, ch. 360, title I, § 110, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1680, and amended June 22, 1974, Pub. L. 93-319, § 4, 88 Stat. 256; S. Res. 4, Feb. 4, 1977; Aug. 7, 1977, Pub. L. 95-95, title I, §§ 107, 108, 91 Stat. 691, 693; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(1)-(6), 91 Stat. 1399; July 17, 1981, Pub. L. 97-23, § 3, 95 Stat. 142.)

References in Text

The Clean Air Act Amendments of 1977, referred to in subsec. (a)(2)(H)(ii), is Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, as amended, which amended this chapter generally. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 7401 of this title and Tables.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 1857c-10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original "section 119, as in effect before the date of the enactment of this paragraph", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95-95, § 107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Codification

Section was formerly classified to section 1857c-5 of this title.

Prior Provisions

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91-604, and is classified to section 7417 of this title.

Amendments

1981—Subsec. (a)(3)(C). Pub. L. 97-23 added reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95-95, § 108(a)(1), substituted "(A) except as may be provided in subparagraph (I)(i) in the case of a plan" for "(A)(i) in the case of a plan".

Subsec. (a)(2)(B). Pub. L. 95-95, § 108(a)(2), substituted "transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)" for "land use and transportation controls".

Subsec. (a)(2)(D). Pub. L. 95-95, § 108(a)(3), substituted "it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maint
and (ii) a procedure" for "it includes a procedure

Subsec. (a)(2)(E). Pub. L. 95-95, § 108(a)(4),
tuted "it contains adequate provisions (i) prohi
any stationary source within the State from em
any air pollutant in amounts which will (I) preve
tainment or maintenance by any other State o
such national primary or secondary ambient air
ity standard, or (II) interfere with measures req
to be included in the applicable implementation
for any other State under part C to prevent signi
deterioration of air quality or to protect visibility,
(ii) insuring compliance with the requirements of
tion 7426 of this title, relating to interstate poll
abatement" for "it contains adequate provisions fo
tergovernmental cooperation, including measures
essary to insure that emissions of air pollutants
sources located in any air quality control region
not interfere with the attainment or maintenanc
such primary or secondary standard in any portio
such region outside of such State or in any other
quality control region".

Subsec. (a)(2)(F). Pub. L. 95-95, § 108(a)(5), added (vi).

Subsec. (a)(2)(H). Pub. L. 95-190, § 14(a)(1), sub
tuted "1977;" for "1977", which for purposes of cod
cation had already been substituted thereby requir
no further change in text.

Pub. L. 95-95, § 108(a)(6), added "except as provid
in paragraph (3)(C)," after "or (ii)" and "or to oth
wise comply with any additional requirements esta
lished under the Clean Air Act Amendments of 197
after "to achieve the national ambient air quality p
mary or secondary standard which it implements".

Subsec. (a)(2)(I). Pub. L. 95-95, § 108(b), add
subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95-190, § 14(a)(2), substitut
ed "; and" for ", and", which for purposes of codific
tion had already been substituted thereby requiring no further change in text.

Pub. L. 95-95, § 108(b) added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95-95, § 108(b), added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95-95, § 108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95-190, § 14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95-95, § 108(3), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95-190, § 14(a)(3), struck out "preconstruction or premodification" preceding "review".

Subsec. (a)(6). Pub. L. 95-95, § 108(3), added par. (6).

Subsec. (c)(1). Pub. L. 95-95, § 108(d)(1), (2), substituted "plan which meets the requirements of this section" for "plan for any national ambient air quality primary or secondary standard within the time prescribed" in subpar. (A) and, in the provisions following subpar. (C), directed that any portion of a plan relating to any measure described in the first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95-95, § 108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95-95, § 108(f), substituted "and which implements the requirements of this section" for "and which implements a national primary or secondary ambient air quality standard in a State".

Subsec. (f). Pub. L. 95-95, § 107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95-95, § 107(b), added subsec. (g).

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Subsec. (h). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95-95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95-95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95-190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95-95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted "will enable such source" for "at such source will enable it".

1974—Subsec. (a)(3). Pub. L. 93-319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93-319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

Change of Name

The Committee on Public Works of the Senate was abolished and replaced by the Committee on Environment and Public Works of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Implementation Plans Approved and In Effect Prior to Aug. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95-95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Savings Provisions

Section 16 of Pub. L. 91-604 provided that:

"(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91-604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

"(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter]."

Federal Energy Administrator

The "Federal Energy Administrator", for purposes of this chapter, to mean the Administrator of the Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until the Federal Energy Administrator takes office and after the Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 6211, 6215, 7405, 7407, 7411, 7413, 7414, 7415, 7419, 7420, 7425, 7426, 7475, 7476, 7491, 7501, 7502, 7504, 7506, 7545, 7607, 7613, 7619, 8374, 8375, 9601 of this title.

Code: US-E-b-6(i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Public Participation

Initiation and Termination Dates:

Relevant Legislation: Clean Air Act 42 USC P.7401-7642 (1982) Sect. 304 Clean Air Act (1977) 42 USC P. 7604 Sect. 307(j) 42 USc 7607(d)

6. Clean Air Act § 304, 42 U.S.C. § 7604 (1982). Section 304 states in pertinent part: Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf — (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or (3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or regulation, or such an order, or to order the Administrator to perform such act or duty as the case may be.

7. Clean Air Act § 307(d), 42 U.S.C. § 7607(d) (1982). Section 307 authorizes private citizens to initiate review of the following EPA actions:

A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

C) the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,

D) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

E) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

F) promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),

G) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

H) promulgation or revision of regulations under part B of subchapter I of this chapter (relating to stratosphere and ozone protection),

I) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

J) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

K) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

L) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

M) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement), and

N) such other actions as the Administrator may determine.

10. 42 U.S.C. § 7607(f) (1982). Section 304(d), 42 U.S.C. § 7604(d) (1982), contains similar language: "The court . . . may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate."

Code: US-E-b-11(:)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: ADR-Draft Guidance--Mediation

Initiation and Termination Dates: 1979/1986

Relevant Legislation: 40 CFR P.123; 44 Fed. Reg. 46774 (1979) 5 USC P.553(b) 1982; 1986 Guidance Procedures

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued), that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
	5 U.S.C. 1003.	June 11, 1946, ch. 324, § 4, 60 Stat. 238.

In subsection (a)(1), the words "or naval" are omitted as included in "military".

In subsection (b), the word "when" is substituted for "in any situation in which".

In subsection (c), the words "for oral presentation" are substituted for "to present the same orally in any manner". The words "sections 556 and 557 of this title apply instead of this subsection" are substituted for "the requirements of sections 1006 and 1007 of this title shall apply in place of the provisions of this subsection".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 553 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2245 of Title 7, Agriculture.

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, set out as a note under section 601 of this title.

FEDERAL REGULATION REQUIREMENTS

For provisions relating to requirements for the promulgation of new regulations, review of existing regulations, etc., see Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, set out as a note under section 601 of this title.

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CROSS REFERENCES

Secretary of Education, prescribing of rules as to priorities in connection with grants for construction of undergraduate academic facilities by, see section 1132b-1 of Title 20, Education.

Federal Register Act, see section 1502 et seq. of Title 44, Public Printing and Documents.

Sugar Act, procedure of Secretary of Agriculture in making determinations of substantial interference under, see section 1116 of Title 7, Agriculture.

Wildlife management areas, hunting game birds, see section 718d of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552a, 556, 601, 603, 604, 1103, 1105 of this title; title 2 sections 501, 502; title 7 sections 2013, 2014; title 15 sections 18a, 57a, 57a-1, 78s, 78ggg, 789, 1193, 1203, 1262, 1410b, 1474, 1476, 1604, 1693b, 1912, 2058, 2079, 2082, 2309, 2603, 2604, 2605, 2618, 2703, 2823, 3412, 3803; title 16 sections 839b, 971d, 1379, 1381, 1463, 1463a, 1533, 1535, 1604, 1821, 1855, 3341; title 18 sections 4201, 4218; title 19 section 2561; title 20 sections 1132b-1, 1221e-4, 1232; title 21 sections 358, 360d, 463; title 29 section 828; title 30 sections 811, 936, 1211, 1468; title 33 sections 1231, 1322, 1504; title 40 section 333; title 41 sections 43a, 47; title 42 sections 300g-1, 300h, 300k-1, 1997e, 2210a, 3535, 4905, 5060, 5403, 5506, 5918, 5919, 6306, 6392, 7191, 7607, 8275, 8372, 8411, 9112, 9127, 9204; title 43 section 1740; title 44 section 2206; title 45 sections 431, 502, 562; title 46 section 391a; title 49 sections 10326, 10362, 11350; title 49 App. sections 1348, 1387, 1804; title 50 App. sections 2158, 2158a, 2168, 2412.

Code: US-E-b-12 (i)

Country: US

Type of Regulation: Public Health

Name of Agency: EPA

Program Title: Advisory Committees: Pollution Control

Initiation and Termination Dates:

Relevant Legislation: Clean Water Act

§ 1361. Administration

(a) Authority of Administrator to prescribe regulations

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this chapter.

(c) Recordkeeping

Each recipient of financial assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate effective audit.

(d) Audit

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs

(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this chapter, or otherwise does not have a satisfactory record with respect to environmental quality.

(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be notified of the award by the Administrator and the awarding of such recognition shall be published in the Federal Register.

(f) Detail of Environmental Protection Agency personnel to State water pollution control agencies

Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(June 30, 1948, ch. 758, title V, § 501, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 885.)

ENVIRONMENTAL COURT FEASIBILITY STUDY

Section 9 of Pub. L. 92-500 authorized the President, acting through the Attorney General, to study the feasibility of establishing a separate court or court system with jurisdiction over environmental matters and required him to report the results of his study, together with his recommendations, to Congress not later than one year after Oct. 18, 1972.

TRANSFER OF PUBLIC HEALTH SERVICE OFFICERS

Pub. L. 89-234, § 2(b)-(k), Oct. 2, 1965, 79 Stat. 903, authorized the transfer of certain commissioned officers of the Public Health Service to classified positions in the Federal Water Pollution Control Administration, now the Environmental Protection Agency, where such transfer was requested within six months after the establishment of the Administration and made certain administrative provisions relating to pension and retirement rights of the transferees, sick leave benefits, group life insurance, and certain other miscellaneous provisions.

US-E-b-12(ii)

§ 1362. Definitions

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(June 30, 1948, ch. 758, title V, § 502, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 886, and amended Dec. 27, 1977, Pub. L. 95-217, § 33(b), 91 Stat. 1577.)

AMENDMENTS

1977—Par. (14). Pub. L. 95-217 added provision that the term "point source" does not include return flows from irrigated agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1319, 1344 of this title; title 26 section 169; title 30 section 1419; title

Code: US-E-c-1(i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Progam Title: Compliance Program/Administrative and Criminal Non-Compliance Penalties.

Initiation and Termination Dates:

Relevant Legislation: Clean Water Act Par. 309. 33 USC Par. 1319 force its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

(June 30, 1948, ch. 758, title III, § 308, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 858, and amended Dec. 27, 1977, Pub. L. 95-217, § 67(c)(1), 91 Stat. 1606.)

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-217 added "1344 (relating to State permit programs)," following "sections 1315, 1321, 1342," in the provisions preceding subpar. (A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1319, 1342, 1344 of this title; title 42 section 9606.

§ 1319. Enforcement

(a) State enforcement; compliance orders

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title in a permit issued by a State under an approved permit program under section 1342 or 1344 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5)(A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this chapter or in any permit issued under this chapter, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 1342 of this title was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 1311(b)(1)(A) or (C) of this title, (B) that such person cannot meet the requirements for a time extension under section 1311(i)(2) of this title, and (C) that the most expeditious and appropriate means of compliance with this chapter by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this chapter at the earliest date practicable, but not later than July 1, 1983, by discharging into a

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publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) Civil actions

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) Criminal penalties

(1) Any person who willfully or negligently violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State or in a permit issued under section 1344 of this title by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(d) Civil penalties

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) State liability for judgments and expenses

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) Wrongful introduction of pollutants into treatment works

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 1317 of this title, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this chapter. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this chapter.

(June 30, 1948, ch. 758, title III, § 309, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 859, and amended Dec. 27, 1977, Pub. L. 95-217, §§ 54(b), 55, 56, 67(c)(2), 91 Stat. 1591, 1592, 1606.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-217, §§ 55(a), 67(c)(2)(A), substituted "1318, 1328, or 1345 of this title" for "or 1318 of this title" and "1342 or 1344 of this title" for "1342 of this title".

Subsec. (a)(2). Pub. L. 95-217, § 56(a), substituted "except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation" for "the Administrator shall enforce any permit condition or limitation".

Subsec. (a)(3). Pub. L. 95-217, §§ 55(b), 67(c)(2)(B), substituted "1318, 1328, or 1345 of this title" for "or 1318 of this title" added "or in a permit issued under section 1344 of this title by a State" following "in a permit issued under section 1342 of this title by him or by a State".

Subsec. (a)(4). Pub. L. 95-217, § 56(b), struck out provision that any order issued under this subsection had to be by personal service and had to state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. See section subsec. (a)(5) of this section.

Subsec. (a)(5), (6). Pub. L. 95-217, § 56(c), added pars. (5) and (6).

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Subsec. (c)(1). Pub. L. 95-217, § 67(c)(2)(C), substituted "by a State or in a permit issued under section 1344 of this title by a State, shall be punished" for "by a State, shall be punished".

Subsec. (d). Pub. L. 95-217, §§ 55(c), 67(c)(2)(D), substituted "1318, 1328, or 1345 of this title" for "or 1318 of this title" and added "or in a permit issued under section 1344 of this title by a State," following "permit issued under section 1342 of this title by the Administrator, or by a State,".

Subsec. (f). Pub. L. 95-217, § 54(b), added subsec. (f).

ACTIONS BY SURGEON GENERAL RELATING TO INTERSTATE POLLUTION

Act July 9, 1956, ch. 518, § 5, 70 Stat. 507, provided that actions by the Surgeon General with respect to water pollutants under section 2(d) of act June 30, 1948, ch. 758, 62 Stat. 1155, as in *effect* prior to July 9, 1956, which had been completed prior to such date, would still be subject to the terms of section 2(d) of act June 30, 1948, in effect prior to the July 9, 1956 amendment, but that actions with respect to such pollutants would nevertheless subsequently be possible in accordance with the terms of act June 30, 1948, as amended by act July 9, 1956.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1321, 1342, 1344, 1365, 1368 of this title; title 42 sections 9606, 9607.

Code: US-E-c-6 (i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Civil and Delayed Non-Compliance Strategies

Initiation and Termination Dates: 1970; Amendments, 1977

Relevant Legislation: Clean Air Act, 1977. Section 113, 120; 42 USC 7413, 7420.

§ 7413. Federal enforcement procedures

(a) Finding of violation; notice; compliance order; civil action; State failure to enforce plan; construction or modification of major stationary sources

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 7411(e) of this title (relating to new source performance standards), section 7412(c) of this title (relating to standards for hazardous emissions), or section 1857c-10(g) of this title (relating to energy-related authorities) is in violation of any requirement of section 7414 of this title

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(relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(4) An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(5) Whenever, on the basis of information available to him, the Administrator finds that a State is not acting in compliance with any requirement of the regulation referred to in section 129(a)(1) of the Clean Air Act Amendments of 1977 (relating to certain interpretative regulations) or any plan provisions required under section 7410(a)(2)(I) of this title and part D, he may issue an order prohibiting the construction or modification of any major stationary source in any area to which such provisions apply or he may bring a civil action under subsection (b)(5) of this section.

(b) Violations by owners or operators of major stationary sources

The Administrator shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person—

(1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section of a finding that such person is violating such requirement; or

(3) violates section 7411(e), section 7412(c), section 1857c-10(g) of this title (as in effect before August 7, 1977), subsection (d)(5) of this section (relating to coal conversion), section 7624 of this title (relating to cost of certain vapor recovery), section 7419 of this title (relating to smelter orders), or any regulation under part B (relating to ozone); or

(4) fails or refuses to comply with any requirement of section 7414 of this title or subsection (d) of this section; or

(5) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator may commence a civil action for recovery of any noncompliance penalty under section 7420 of this title or for recovery of any nonpayment penalty for which any person is liable under section 7420 of this title or for both. Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty (and nonpayment penalty) owed under section 7420 of this title. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.

(c) Penalties

(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order under section 7419 of this title or under subsection (a) or (d) of this section, or

(C) violates section 7411(e), section 7412(c) of this title, or

(D) violates any requirement of section 1857c-10(g) of this title (as in effect before August 7, 1977), subsection (b)(7) or (d)(5) of section 7420 of this title (relating to noncompliance penalties), or any requirement of part B (relating to ozone)[2]

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained

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under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Final compliance orders

(1) A State (or, after thirty days notice to the State, the Administrator) may issue to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order which specifies a date for final compliance with such requirement later than the date for attainment of any national ambient air quality standard specified in such plan if—

(A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing;

(B) the order contains a schedule and timetable for compliance;

(C) the order requires compliance with applicable interim requirements as provided in paragraph (5)(B) (relating to sources converting to coal), and paragraph (6) and (7) (relating to all sources receiving such orders) and requires the emission monitoring and reporting by the source authorized to be required under sections 7410(a)(2)(F) and 7414(a)(1) of this title;

(D) the order provides for final compliance with the requirement of the applicable implementation plan as expeditiously as practicable, but (except as provided in paragraph (4) or (5)) in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such plan, whichever is later; and

(E) in the case of a major stationary source, the order notifies the source that, unless exempted under section 7420(a)(2)(B) or (C), it will be required to pay a noncompliance penalty effective July 1, 1979, as provided under section 7420 of this title or by such later date as is set forth in the order in accordance with section 7420(b)(3) or (g) of this title in the event such source fails to achieve final compliance by July 1, 1979.

(2) In the case of any major stationary source, no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter. The Administrator shall determine, not later than 90 days after receipt of notice of the issuance of an order under this subsection with respect to any major stationary source, whether or not any State order under this subsection is in accordance with the requirements of this chapter. In the case of any source other than a major stationary source, such order issued by the State shall cease to be effective upon a determination by the Administrator that it was not issued in accordance with the requirements of this chapter. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) of this section or an order under this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance than that contained in an order by the Administrator.

(3) If any source not in compliance with any requirement of an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the facility, a complete change in production process, or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until July 1, 1979, without any interim schedule of compliance: *Provided*, That as a condition of the issuance of any such order, the owner or operator of such source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

(4) An order under paragraph (1) of this subsection may be issued to an existing stationary source if—

(A) the source will expeditiously use new means of emission limitation which the Administrator determines is likely to be adequately demonstrated (within the meaning of section 7411(a)(1)) of this title upon expiration of the order,

(B) such new means of emission limitation is not likely to be used by such source unless an order is granted under this subsection.[4]

(C) such new means of emission limitation is determined by the Administrator to have a substantial likelihood of—

(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such order, would be required; or

(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or nonair quality environmental impact; and

(D) compliance by the source with the requirement of the applicable implementation plan would be impracticable prior to, or during, the installation of such new means.

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Such an order shall provide for final compliance with the requirement in the applicable implementation plan as expeditiously as practicable, but in no event later than five years after the date on which the source would otherwise be required to be in full compliance with the requirement.

(5)(A) In the case of a major stationary source which is burning petroleum products or natural gas, or both and which—

(i) is prohibited from doing so under an order pursuant to the provisions of section 792(a) of title 15, or any amendment thereto, or any subsequent enactment which supersedes such provisions, or

(ii) within one year after August 7, 1977, gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural gas supplies, approved by the appropriate State regulatory commission),

and which thereby would no longer be in compliance with any requirement under an applicable implementation plan, an order may be issued by the Administrator under paragraph (1) of this subsection for such source which specifies a date for final compliance with such requirement as expeditiously as practicable, but not later than December 31, 1980. The Administrator may issue an additional order under paragraph (1) of this subsection for such source providing an additional period for such source to come into compliance with the requirement in the applicable implementation plan, which shall be as expeditiously as practicable, but in no event later than five years after the date required for compliance under the preceding sentence.

(B) In issuing an order pursuant to subparagraph (A), the Administrator shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each source to which such an order applies. Such limitations, requirements, and measures shall be those which the Administrator determines must be complied with by the source in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

(C) The Administrator may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into before August 7, 1977.

(D) No order issued to a source under this paragraph with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time; and

(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.

(6) An order issued to a source under this subsection shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable.

(7) A source to which an order is issued under paragraph (1), (3), (4), or (5) of this subsection shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such order is in effect and shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include—

(A) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

(B) a requirement that the source comply with the requirements of the applicable implementation plan during any such period insofar as such source is able to do so (as determined by the Administrator).

(8) Any order under paragraph (1) of this subsection shall be terminated if the Administrator determines on the record, after notice and hearing, that the inability of the source to comply no longer exists. If the owner or operator of the source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under this subsection.

(9) If the Administrator determines that a source to which an order is issued under this

subsection is in violation of any requirement of this subsection, he shall—

(A) enforce such requirement under subsections (a), (b), or (c) of this section,

(B) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(C) give notice of noncompliance and commence action under section 7420 of this title, or

(D) take any appropriate combination of such actions.

(10) During the period of the order in effect under this subsection and where the owner or operator is in compliance with the terms of such order, no Federal enforcement action pursuant to this section and no action under section 7604 of this title shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the source covered by such order.

(11) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(12) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on August 7, 1977, shall remain in effect to the extent that such order or consent decree is (A) not inconsistent with the requirements of this subsection and section 7419 of this title or (B) the administrative orders on consent issued by the Administrator on November 5, 1975 and February 26, 1976 and requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 7411 of this title. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, except such administrative orders on consent, is void unless modified under this subsection within one year after August 7, 1977, to comply with the requirements of this subsection.

(e) Steel industry compliance extension

(1) The Administrator may, in his discretion, in the case of any person which is the owner or operator of a stationary source in an iron- and steel-producing operation not in compliance with the emission limitation requirements of an applicable implementation plan, consent to entry of a Federal judicial decree, or to the modification of an existing Federal judicial decree, with such person establishing a schedule for compliance for such source extending beyond December 31, 1982, but ending not later than December 31, 1985, on the following conditions:

(A) the Administrator finds, on the basis of information submitted by the applicant and other information available to him, that such extension of compliance is necessary to allow such person to make capital investments in its iron- and steel-producing operations to improve their efficiency and productivity;

(B) the Administrator finds, on the basis of information submitted by the applicant and other information available to him, that an amount equal to the funds the expenditure of which would have been required to comply by December 31, 1982, with those requirements of an applicable implementation plan for which such extensions of compliance are granted and whose expenditure for such purposes are being deferred until after December 31, 1982, pursuant to such extensions will be invested prior to two years from July 17, 1981, in additional capital investments in the iron- and steel-producing operations owned or operated by such person, and located in communities which already contain iron- and steel-producing operations, to improve their efficiency and productivity;

(C) the Administrator and such person consent to entry of Federal judicial decree(s) establishing a phased program of compliance to bring each stationary source at all of such person's iron- and steel-producing operations into compliance with the emission limitation requirements of applicable implementation plans (or, with respect to existing stationary sources located in any nonattainment area for which no implementation plan has been approved as meeting the requirements of part D and subject to implementation plan(s) which do not require compliance with emission limitations which represent at least reasonably available control technology, compliance with emission limitations which represent reasonably available control technology) as expeditiously as practicable but no later than December 31, 1982, or, in the case of sources for which extensions of compliance have been granted, no later than December 31, 1985; such decree(s) shall also contain, at a minimum, (i) requirements for interim controls (which may include operation and maintenance procedures); (ii) increments of compliance sufficient to assure compliance by the final compliance deadlines; (iii) requirement(s) that the amount referred to in subparagraph (B) above, is to be invested in projects representing additional capital investments in the iron- and steel-producing operations owned or operated by such person for the purposes specified in such subparagraph and shall contain schedule(s) specifying when each such project (or specified alternative project) is to be commenced and completed, as well as increments of progress toward completion; (iv) stipulated monetary penalties covering completion of the air pollution control projects required by the decree, the projects referred to under (iii) above, and such other items as appropriate; (v) monitoring requirements; (vi) reporting requirements (including provision for periodic reports to be filed with the court); and (vii) provisions for preventing increases of emissions from each stationary source;

(D) the Administrator finds, on the basis of information submitted by the applicant and other information available to him, that such person will have sufficient funds to comply with all applicable requirements by the times set forth in the judicial decree(s) entered into

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pursuant to subparagraph (C) of this subsection;

(E) the Administrator finds, on the basis of information submitted by the applicant and other information available to him, that the applicant is in compliance with existing Federal judicial decrees (if any) entered under this section applicable to its iron- and steel-producing operations or that any violations of such decrees are de minimus in nature; and

(F) the Administrator finds, on the basis of information submitted by the applicant and other information available to him, that any extension of compliance granted pursuant to this subsection will not result in degradation of air quality during the term of the extension.

(2) For the purpose of this subsection, "iron- and steel-producing operations" include production facilities for iron and steel, as well as associated processing, coke making and sintering facilities. For the purpose of this subsection, "phased program of compliance" means a program assuring, to the extent possible, that capital expenditures for achieving compliance at all sources owned or operated by such person in iron- and steel-producing operations must be made during the second and each succeeding year of the period covered by the decree(s) in an amount such that at the end of each such year the cumulative expenditures under the decree(s) will be at least equal to the amount which would have been spent if the total expenditures to be made under the decree(s) were made in equal increments during each year of the decree(s). For the purpose of this subsection, "additional capital investments in iron- and steel-producing operations" means investments which the Administrator finds would not be made during the same time period if extension(s) of time for compliance with clean air requirements were not granted under this subsection. The decree entered into pursuant to subparagraph (C) of paragraph (1) of this subsection shall specify the projects which represent additional capital investment in iron- and steel-producing operations, but may also contain specified alternative projects. The decree may also be modified to substitute equivalent projects for those specified. The owner or operator of iron- and steel-producing operations seeking an extension of compliance under this subsection has the burden of satisfying the Administrator with regard to the findings required in paragraphs (A), (B), (D), (E), and (F). A person which is subject to a judicial decree entered or modified pursuant to this subsection shall not be assessed a noncompliance penalty under section 7420 of this title for any source with an extension of compliance under such decree for the period of time covered by the decree only if such source remains in compliance with all provisions and requirements of such decree.

(3) Any records, reports, or information obtained by the Administrator under this subsection shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data) to which the Administrator has access under this section if made public, is likely to cause substantial harm to the person's competitive position, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Any regulations promulgated under section 7414 of this title apply with equal force to this subsection subject, however, to any changes that the Administrator shall determine are necessary. This paragraph does not constitute authority to withhold records, reports, or information from the Congress.

(4) Nothing in this subsection shall preclude or deny the right of any State or political subdivision to enforce any air pollution requirements in any State judicial or administrative forum.

(5) The provisions of this subsection shall be self-executing, and no implementing regulations shall be required.

(6) Upon receipt of an application for an extension of time under this subsection with respect to any stationary source the Administrator shall promptly—

(i) publish notice of such receipt in the Federal Register;

(ii) notify the Governor of the State in which the stationary source is located; and

(iii) notify the chief elected official of the political subdivision in which the source is located.

(7)(A) The Administrator shall publish in the Federal Register notice of any finding made, or other action taken, by him in connection with the entry of any consent decree or modification of an existing consent decree pursuant to this subsection or in connection with the Administrator's failure or refusal to consent to such a decree.

(B)(i) Except as provided in clause (ii), any finding or other action of the Administrator under this subsection with respect to any stationary source, and any failure or refusal of the Administrator to make any such finding or to take any such action under this subsection, shall be reviewable only by a court in which a civil action under this section is brought against the owner or operator of such stationary source.

(ii) Where, before July 17, 1981, a civil action was brought under this chapter against the owner or operator of such stationary source, any finding or other action of the Administrator under this subsection with respect to such stationary source, and any failure or refusal of the Administrator to make any such finding or to take any such action under this subsection, shall be reviewable only by the court in which the civil action was brought.

(8) The provisions of section 7604(b)(1)(B) of this title shall be applicable to this subsection.

(9) For a source which receives an extension under this subsection, air pollution requirements specified in Federal judicial decrees en-

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tered into or modified under this subsection that involves such source may not be modified to extend beyond December 31, 1985.

(July 14, 1955, ch. 360, title I, § 113, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, § 6(a)(1)-(3), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title I, §§ 111, 112(a), 91 Stat. 704, 705; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(10)-(21), (b)(1), 91 Stat. 1400, 1404; July 17, 1981, Pub. L. 97-23, § 2, 95 Stat. 139.)

References in Text

Section 1857c-10(g) of this title, referred to in subsec. (a)(3), was in the original "119(g)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, which was classified to section 1857c-10 of this title. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of this section. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 129(a)(1) of the Clean Air Act Amendments of 1977, referred to in subsec. (a)(5), is section 129(a)(1) of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 745, which is set out as a note under section 7502 of this title.

Section 1857c-10(g) of this title (as in effect before August 7, 1977), referred to in subsecs. (b)(3) and (c)(1)(D), was in the original "section 119(g) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of this section. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Codification

Section was formerly classified to section 1857c-8 of this title.

Amendments

1981—Subsec. (e). Pub. L. 97-23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95-95, § 111(a), added par. (5).

Subsec. (b). Pub. L. 95-95, § 111(b), (c), substituted "shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person" for "may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person" in the provisions preceding par. (1), added references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), added reference to subsec. (d) of this section in par. (4), added par. (5), and, in the provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded the jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated the factors to be taken into consideration in determining the amount of civil penalties, and authorized the awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95-190, § 14(a)(10), (11), added "or" following "ozone);", and substituted "7624" for "7620", "conversion), section" for "conversion) section", and "orders), or" for "orders) or".

Subsec. (c)(1). Pub. L. 95-95, § 111(d)(1), (2), substituted "any order issued under section 7419 of this title or under subsection (a) or (d) of this section" for "any order issued by the Administrator under subsection (a) of this section" in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95-95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95-190, § 14(a)(12), added "or" following "section,".

Subsec. (c)(1)(D). Pub. L. 95-190, § 14(a)(13), substituted "1977 subsection" for "1977) subsection" and "penalties), or" for "penalties) or".

Subsec. (c)(3). Pub. L. 95-95, § 111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95-95, § 112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95-190, § 14(a)(14), substituted "to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order" for "an order for any stationary source" and "such requirement" for "any requirement of an applicable implementation plan".

Subsec. (d)(1)(E). Pub. L. 95-190, § 14(a)(15), added provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95-190, § 14(a)(16), added provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95-190, § 14(a)(17), substituted "title) upon" for "title upon".

Subsec. (d)(5)(A). Pub. L. 95-190, § 14(a)(18), substituted "an additional period for" for "an additional period of".

Subsec. (d)(8). Pub. L. 95-190, § 14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95-190, § 14(a)(20), substituted "in effect" for "issued", "Federal" for "other", and "and no action under" for "or".

Subsec. (d)(11). Pub. L. 95-190, § 14(a)(21), substituted "and in effect" for "(and approved by the Administrator)".

1974—Subsec. (a)(3). Pub. L. 93-319, § 6(a)(1), inserted reference to section 1857c-10(g) of this title (relating to energy-related authorities).

Subsec. (b)(3). Pub. L. 93-319, § 6(a)(2), inserted reference to section 1857c-10(g) of this title.

Subsec. (c)(1)(C). Pub. L. 93-319, § 6(a)(3), inserted reference to section 1857c-10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92-157, § 302(b), inserted "(A)" preceding "during" and ", or (B)" following "assumed enforcement".

Subsec. (c)(1)(A). Pub. L. 92-157, § 302(c), inserted "(i)" preceding "during" and ", or (ii)" following "assumed enforcement".

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(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, § 119, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 117(b), 91 Stat. 712, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(25)-(27), 91 Stat. 1401.)

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, which was classified to section 1857c-10 of this title, provided for the authority to deal with energy shortages. Such section 119 was repealed by Pub. L. 95-95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-190, § 14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95-190, § 14(a)(26), substituted "7621" for "7619".

Subsec. (e). Pub. L. 95-190, § 14(a)(27), substituted "an order under this section" for "such order".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7413, 7420, 7604, 7607, 7621 of this title; title 15 sections 793, 798.

§ 7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

(B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.

(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B) of this section.

(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates—

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411 or 7412 of this title, or

(iii) any source referred to in clause (i) or (ii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection (d)(2) of this section, in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

(B) Notwithstanding the requirements of subparagraph (A)(i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b)(5) of this section, the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to—

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5) of this title or section 1857c-10 of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c-10(c)(1) of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supersedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4) of this title;

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(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d) of this title (or an order under section 7413 of this title issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(b) Regulations

Regulations under subsection (a) of this section shall—

(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a)(1)(B)(i) of this section;

(2) provide for the assessment and collection of such penalty by the Administrator, if—

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i) of this section, or

(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a)(2)(A) of this section with respect to each source owned or operated by such person which is not in compliance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

(4) require each person to whom notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2) of this section) and the schedule of payments (determined in accordance with subsection (d)(3) of this section) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

(B) submit a petition, within forty-five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a)(2)(B) of this section with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing which is substantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period;

(6)(A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsection (d) of this section, of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d)(4) of this section.

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

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(f) Other orders, payments, sanctions, or requirements

Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this chapter or State or local law.

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, § 120, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 118, 91 Stat. 714, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(28)-(38), 91 Stat. 1401.)

REFERENCES IN TEXT

Section 1857c-10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in the original "section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c-10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original "section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)." See paragraph set out above for explanation of codification.

AMENDMENTS

1977—Subsec. (a)(2)(A). Pub. L. 95-190, § 14(a)(28), (29), in cls. (i) and (iii) added provisions relating to consent decrees wherever appearing therein.

Subsec. (a)(2)(B). Pub. L. 95-190, § 14(a)(30), (31), in cl. (i) added reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) added provision relating to orders in effect under section 1857c-10 of this title before Aug. 7, 1977, wherever appearing therein.

Subsec. (b). Pub. L. 95-190, § 14(a)(34)-(36), in closing material added provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, "source" for "facility", and "receipt of notice of the State penalty assessment" for "publication of the proposed penalty".

Subsec. (b)(2)(A). Pub. L. 95-190, § 14(a)(33), substituted "(a)(1)(B)(i)" for "(e)".

Subsec. (b)(8). Pub. L. 95-190, § 14(a)(32), substituted "(4)" for "(6)".

Subsec. (d)(2)(A). Pub. L. 95-190, § 14(a)(37), added provisions relating to inclusion of the economic value of a delay in compliance, and substituted "such a delay" for "a delay in compliance beyond July 1, 1979,".

Subsec. (e). Pub. L. 95-190, § 14(a)(38), substituted "subsection, shall" for "subsection shall".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7419, 7425, 7607 of this title.

§ 7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d) of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, § 121, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 119, 91 Stat. 719.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95.

Code:US-E-c-7 (i)

Country: US

Type of Regulation: Environmental

Name of Agency: EPA

Program Title: Promoting Innovation in Existing Regulatory Statutes--Waivers and Variances

Initiation and Termination Dates: 1977

Relevant Legislation: Clean Air Act; 42 USC *7411(j)(l)(A); Clean Water Act

§ 7411

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under

the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of

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(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(f), 85 Stat. 464; Aug. 7, 1977, Pub. L. 95-95, title I, § 109(a)-(d)(1), (e), (f), title IV, § 401(b), 91 Stat. 697-703, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(7)-(9), 91 Stat. 1399; Nov. 9, 1978, Pub. L. 95-623, § 13(a), 92 Stat. 3457.)

Code: US-O-a-1 (ii)

Country: US

Type of Regulation: Health

Name of Agency: Food and Drug Administration

Program Title: Food Additive Screening

Initiation and Termination Dates: 1958

Relevant Legislation: Food, Drug, and Cosmetic Act (21 USC §348)

§ 348. Food additives

(a) Unsafe food additives; exception for conformity with exemption or regulation

A food additive shall, with respect to any particular use or intended use of such additives, be deemed to be unsafe for the purposes of the application of clause (2)(C) of section 342(a) of this title, unless—

(1) it and its use or intended use conform to the terms of an exemption which is in effect pursuant to subsection (i) of this section; or

(2) there is in effect, and it and its use or intended use are in conformity with, a regulation issued under this section prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of section 342(a) of this title.

(b) Petition for regulation prescribing conditions of safe use; contents; description of production methods and controls; samples; notice of regulation

(1) Any person may, with respect to any intended use of a food additive, file with the Secretary a petition proposing the issuance of a regulation prescribing the conditions under which such additive may be safely used.

(2) Such petition shall, in addition to any explanatory or supporting data, contain—

(A) the name and all pertinent information concerning such food additive, including, where available, its chemical identity and composition;

(B) a statement of the conditions of the proposed use of such additive, including all directions, recommendations, and suggestions proposed for the use of such additive, and including specimens of its proposed labeling;

(C) all relevant data bearing on the physical or other technical effect such additive is intended to produce, and the quantity of such additive required to produce such effect;

(D) a description of practicable methods for determining the quantity of such additive in or on food, and any substance formed in or on food, because of its use; and

(E) full reports of investigations made with respect to the safety for use of such additive, including full information as to the methods and controls used in conducting such investigations.

(3) Upon request of the Secretary, the petitioner shall furnish (or, if the petitioner is not the manufacturer of such additive, the petitioner shall have the manufacturer of such additive furnish, without disclosure to the petitioner) a full description of the methods used in, and the facilities and controls used for, the production of such additive.

(4) Upon request of the Secretary, the petitioner shall furnish samples of the food additive involved, or articles used as components thereof, and of the food in or on which the additive is proposed to be used.

(5) Notice of the regulation proposed by the petitioner shall be published in general terms by the Secretary within thirty days after filing.

(c) Approval or denial of petition; time for issuance of order; evaluation of data; factors

(1) The Secretary shall—

(A) by order establish a regulation (whether or not in accord with that proposed by the petitioner) prescribing, with respect to one or more proposed uses of the food additive involved, the conditions under which such additive may be safely used (including, but not limited to, specifications as to the particular food or classes of food in or in which such additive may be used, the maximum quantity which may be used or permitted to remain in or on such food, the manner in which such additive may be added to or used in or on such food, and any directions or other labeling or packaging requirements for such additive deemed necessary by him to assure the safety of such use), and shall notify the petitioner of such order and the reasons for such action; or

(B) by order deny the petition, and shall notify the petitioner of such order and of the reasons for such action.

(2) The order required by paragraph (1)(A) or (B) of this subsection shall be issued within ninety days after the date of filing of the petition, except that the Secretary may (prior to such ninetieth day), by written notice to the petitioner, extend such ninety-day period to such time (not more than one hundred and eighty days after the date of filing of the petition) as the Secretary deems necessary to enable him to study and investigate the petition.

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(3) No such regulation shall issue if a fair evaluation of the data before the Secretary—

(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, except that this proviso shall not apply with respect to the use of a substance as an ingredient of feed for animals which are raised for food production, if the Secretary finds (i) that, under the conditions of use and feeding specified in proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended, and (ii) that no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations, which regulations shall not be subject to subsections (f) and (g) of this section) in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animal; or

(B) shows that the proposed use of the additive would promote deception of the consumer in violation of this chapter or would otherwise result in adulteration or in misbranding of food within the meaning of this chapter.

(4) If, in the judgment of the Secretary, based upon a fair evaluation of the data before him, a tolerance limitation is required in order to assure that the proposed use of an additive will be safe, the Secretary—

(A) shall not fix such tolerance limitation at a level higher than he finds to be reasonably required to accomplish the physical or other technical effect for which such additive is intended; and

(B) shall not establish a regulation for such proposed use if he finds upon a fair evaluation of the data before him that such data do not establish that such use would accomplish the intended physical or other technical effect.

(5) In determining, for the purposes of this section, whether a proposed use of a food additive is safe, the Secretary shall consider among other relevant factors—

(A) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive;

(B) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and

(C) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data.

(d) Regulation issued on Secretary's initiative

The Secretary may at any time, upon his own initiative, propose the issuance of a regulation prescribing, with respect to any particular use of a food additive, the conditions under which such additive may be safely used, and the reasons therefor. After the thirtieth day following publication of such a proposal, the Secretary may by order establish a regulation based upon the proposal.

(e) Publication and effective date of orders

Any order, including any regulation established by such order, issued under subsection (c) or (d) of this section, shall be published and shall be effective upon publication, but the Secretary may stay such effectiveness if, after issuance of such order, a hearing is sought with respect to such order pursuant to subsection (f) of this section.

(f) Objections and public hearing; basis and contents of order; statement

(1) Within thirty days after publication of an order made pursuant to subsection (c) or (d) of this section, any person adversely affected by such an order may file objections thereto with the Secretary, specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections. The Secretary shall, after due notice, as promptly as possible hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. As soon as practicable after completion of the hearing, the Secretary shall by order act upon such objections and make such order public.

(2) Such order shall be based upon a fair evaluation of the entire record at such hearing, and shall include a statement setting forth in detail the findings and conclusions upon which the order is based.

(3) The Secretary shall specify in the order the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(g) Judicial review

(1) In a case of actual controversy as to the validity of any order issued under subsection (f) of this section, including any order thereunder with respect to amendment or repeal of a regulation issued under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part.

(2) A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in

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section 2112 of title 28. Upon the filing of such petition the court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm or set aside the order complained of in whole or in part. Until the filing of the record the Secretary may modify or set aside his order. The findings of the Secretary with respect to questions of fact shall be sustained if based upon a fair evaluation of the entire record at such hearing. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

(3) The court, on such judicial review, shall not sustain the order of the Secretary if he failed to comply with any requirement imposed on him by subsection (f)(2) of this section.

(4) If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order.

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order.

(h) Amendment or repeal of regulations

The Secretary shall by regulation prescribe the procedure by which regulations under the foregoing provisions of this section may be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulations.

(i) Exemptions for investigational use

Without regard to subsections (b) to (h), inclusive, of this section, the Secretary shall by regulation provide for exempting from the requirements of this section any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in his opinion such exemption is consistent with the public health.

(June 25, 1938, ch. 675, § 409, as added Sept. 6, 1958, Pub. L. 85-929, § 4, 72 Stat. 1785, and amended June 29, 1960, Pub. L. 86-546, § 2, 74 Stat. 255; Oct. 10, 1962, Pub. L. 87-781, title I, § 104(f)(1), 76 Stat. 785.)

AMENDMENTS

1962—Subsec. (c)(3)(A). Pub. L. 87-781 excepted the proviso from applying to use of a substance as an ingredient of feed for animals raised for food production, if under conditions of use specified in proposed labeling, and which conditions are reasonably certain to be followed in practice, such additive will not adversely affect the animals and no residue will be found in any edible portion of such animal after slaughter, or in any food from the living animal.

1960—Subsec. (g)(2). Pub. L. 86-546 substituted "forthwith transmitted by the clerk of the court to the Secretary, or any officer" for "served upon the Secretary, or upon any officer", "shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28" for "shall certify and file in the court a transcript of the proceedings and the record on which he based his order", and "Upon the filing of such petition the court shall have jurisdiction, which upon the filing of the record with it shall be exclusive," for "Upon such filing, the court shall have exclusive jurisdiction", and inserted sentence authorizing the Secretary to modify or set aside his order until the filing of the record.

EFFECTIVE DATE OF 1962 AMENDMENT; EXCEPTIONS

Amendment by Pub. L. 87-781 effective Oct. 10, 1962, see section 107 of Pub. L. 87-781, set out as an Effective Date of 1962 Amendment note under section 321 of this title.

EFFECTIVE DATE

Section effective Sept. 6, 1958, see section 6(a) of Pub. L. 85-929, set out as an Effective Date of 1958 Amendment note under section 342 of this title.

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Health, Education, and Welfare in establishing tolerances for pesticide chemicals under this section together with the authority to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement and to provide technical assistance to the States and conduct research under this chapter and section 201 et seq. of Title 42, The Public Health and Welfare, were transferred to the Administrator of the Environmental Protection Agency by Reorg. Plan No. 3 of 1970, § 2(a)(4), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

MORATORIUM ON AUTHORITY OF SECRETARY WITH RESPECT TO SACCHARIN

Pub. L. 95-203, § 3, Nov. 23, 1977, 91 Stat. 1452, as amended by Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96-273, June 17, 1980, 94 Stat. 536; Pub. L. 97-42, § 2, Aug. 14, 1981, 95 Stat. 946, provided that: "During the period beginning on the date of the enactment of this Act [Nov. 23, 1977] and ending twenty-four months after the date of enactment of the Saccharin Study and Labeling Act Amendments of 1981 [Aug. 14, 1981], the Secretary—

"(1) may not amend or revoke the interim food additive regulation of the Food and Drug Administration of the Department of Health and Human Services applicable to saccharin and published on March 15, 1977 (section 180.37 of part 180, subchapter B, chapter 1, title 21, Code of Federal Regulations (42 Fed. Reg. 14638)), or

"(2) may, except as provided in section 4 [enacting section 343a of this title, amending sections 321 and 343 of this title, and enacting provisions set out as notes under section 343 of this title] and the amendments made by such section, not take any other action under the Federal Food, Drug, and Cosmetic Act [this chapter] to prohibit or restrict the sale or distribution of saccharin, any food permitted by such interim food additive regulation to contain saccharin, or any drug or cosmetic containing saccharin,

solely on the basis of the carcinogenic or other toxic effect of saccharin as determined by any study made available to the Secretary before the date of the enactment of this Act [Nov. 23, 1977] which involved human studies or animal testing, or both."

For definition of "saccharin" as used in this note, see section 2(d) of Pub. L. 95-203.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 321, 331, 342, 376, 453, 601, 1033 of this title; title 15 section 1262; title 35 section 155.

Code: US-O-a-2 (i)

Country: US

Type of Regulation: Health

Name of Agency: Food and Drug Administration

Program Title: Advisory Committees

Initiation and Termination Dates:

Relevant Legislation: Food, Drug, and Cosmetic Act (21 USC *355 (d)(5)

§ 355. New drugs

(a) Necessity of effective approval of application

No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) of this section is effective with respect to such drug.

(b) Filing application; contents

Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a) of this section. Such person shall submit to the Secretary as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (6) specimens of the labeling proposed to be used for such drug.

(c) Period for approval of application; period for, notice, and expedition of hearing; period for issuance of order

Within one hundred and eighty days after the filing of an application under this subsection, or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

(1) approve the application if he then finds that none of the grounds for denying approval specified in subsection (d) of this section applies, or

(2) give the applicant notice of an opportunity for a hearing before the Secretary under subsection (d) of this section on the question whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall com-

US-0-a-2(ii)

mence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(d) Grounds for refusing application; approval of application; "substantial evidence" defined

If the Secretary finds, after due notice to the applicant in accordance with subsection (c) of this section and giving him an opportunity for a hearing, in accordance with said subsection, that (1) the investigations, reports of which are required to be submitted to the Secretary pursuant to subsection (b) of this section, do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; (4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or (5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or (6) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall issue an order refusing to approve the application. If, after such notice and opportunity for hearing, the Secretary finds that clauses (1) through (6) do not apply, he shall issue an order approving the application. As used in this subsection and subsection (e) of this section, the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

(e) Withdrawal of approval; grounds; immediate suspension upon finding imminent hazard to public health

The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) that the application contains any untrue statement of a material fact: *Provided*, That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (j) of this section or to comply with the notice requirements of section 360(j)(2) of this title, or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

Code: US-O-a-3 (1)

Country: US

Type of Regulation: Occupational Health and Safety

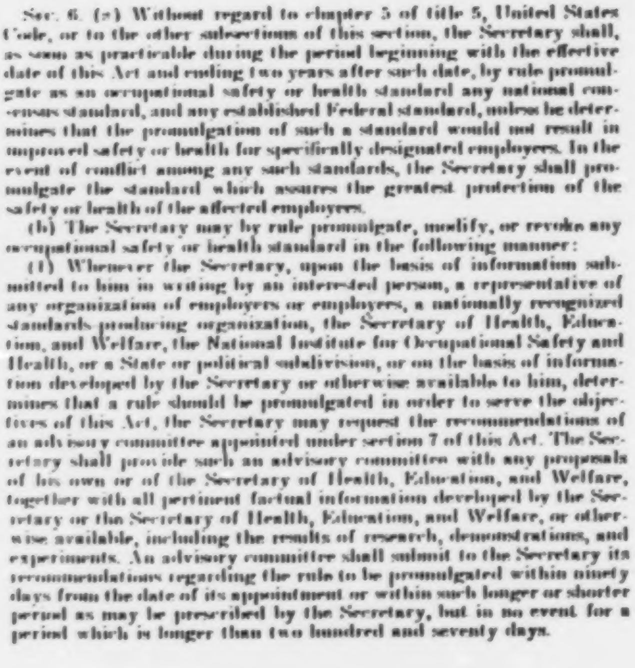
Name of Agency: OSHA/Dept. of Labor

Program Title: Standard Setting

Initiation and Termination Dates: 1971-

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 6

Purpose:



Sec. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

US-0-a-3(ii)

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as

differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

Code: US-O-a-7

Country: US

Type of Regulation: Health and Safety

Name of Agency: Department of Labor, OSHA, Review Commission

Program Title: Settlement Agreements

Initiation and Termination Dates: 1971-

Relevant Legislation: OSH Act, Sect. 10(c) 29 CFR P2200-101

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

80 Stat. 384.

Code: US-O-a-8

Country: US

Type of Regulation: Health and Safety

Name of Agency: OSHA Workers Compensation Boards

Program Title: Worker's Compensation

Initiation and Termination Dates: not known

Relevant Legislation: Federal and State Legislation. Occupational Safety and Health Act, 1970, Sect. 27; Diverse Worker's Compensation Acts.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

Sec. 27. (a) (1) The Congress hereby finds and declares that—

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws. Establishment.

(c) (1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission: Membership.

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

(4) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

(d) (1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation,

(F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

Report to
President
and Congress.

(2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

Hearings.

(e)(1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

80 Stat. 378.
5 USC 101.

5 USC 5101,
5331.

Ante, p. 1946.

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

80 Stat. 416.
Contract
authorization.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

Compensation;
travel ex-
penses.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

Appropriation.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Termination.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

Code: US-O-a-9(i)

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency or Department: OSHA

Program Title: Voluntary Protection Program

Initiation and Termination Dates: not known

Relevant Legislation: OSH Act Section 2(b)(2)

CONGRESSIONAL FINDINGS AND PURPOSE

Sec. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

Code: US-O-a-10 (i)

Country: US

Type of Regulation: Health and Safety

Name of Agency: OSHA / NIOSH

Program Title: New Directions Program (Education)

Initiation and Termination Dates: 1978 -

Relevant Legislation: OSH Act Section 21 (c) OSHA Employer Abatement Assistance Instructions

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

Code: US-O-b-1(i)

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: OSHA/ Department of Labor

Program Title: Record Keeping

Initiation and Termination Dates: 1971-

Relevant Legislation: Occupational Safety and Health Act, 1970. Section 8(c)

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

Code: US-O-b-2 (i)

Country: US

Type of Regulaltion: Health and Safety

Name of Agency: OSHA

Program Title: OSHA Consultation Progam

Initiation and Termination Dates: Permanently institutionalized, 1984 -

Relevant Legislation: OSH Act 1 FR 49 - 25082-25100, 19 June, 1984; Special Program OSH Act 21 (c); 18(b) 7(c)(1)

ADVISORY COMMITTEES; ADMINISTRATION

Establishment; membership.

80 Stat. 378. 5 USC 101.

Sec. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of manangement, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

Public transcript.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

80 Stat. 416.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

80 Stat. 416.

Recordkeeping.

US-0-b-2(ii)

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

Ante, p. 198-1.

80 Stat. 499;
83 Stat. 190.

Sec. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

TRAINING AND EMPLOYEE EDUCATION

Sec. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

Code: US-O-b-5 (i)

Country: US

Type of Regulation: Occupational Health and Safety

Name of Agency: OSHA

Program Title: Worker Participation in Standard Setting and Enforcement

Initiation and Termination Dates: 1971

Relevant Legislation: Health and Safety Act 1970 Section 6,8(f), 116

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

80 Stat. 381;
81 Stat. 195.
5 USC 500.

Sec. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

Advisory committee, recommendations.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

Publication in Federal Register.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

Hearing, notice.

Publication in Federal Register.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

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(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

Toxic materials.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Temporary variance order.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as

differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

Publication in Federal Register.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

Petition for judicial review.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

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(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f)(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g)(1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

Code: US-X-a-1(i)

Country: US

Type of Regulation: Energy

Name of Agency: Dept. of Transportation

Program Title: Fuel Economy

Initiation and Termination Dates:

Relevant Legislation: 1975 Energy Policy and Conservation Act Amendments; 15 USC *2001-2012; 15 USC 2002(a)(l), (4)

SUBCHAPTER V—IMPROVING AUTOMOTIVE EFFICIENCY

Amendments

Pub. L. 96-425, § 8(a)(3), Oct. 10, 1980, 94 Stat. 1828, struck out the heading "Part A—Automotive Fuel Economy".

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1901 of this title; title 26 section 6427.

§ 2001. Definitions

For purposes of this subchapter:

(1) The term "automobile" means any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(A) which is rated at 6,000 lbs. gross vehicle weight or less, or

(B) which—

(i) is rated at more than 6,000 lbs. gross vehicle weight but less than 10,000 lbs. gross vehicle weight,

(ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this subchapter are feasible, and

(iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Secretary may prescribe such rules as may be necessary to implement this paragraph.

(2) The term "passenger automobile" means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals.

(3) The term "automobile capable of off-highway operation" means any automobile which the Secretary determines by rule—

(A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and

(B) either—

(i) is a 4-wheel drive automobile, or

(ii) is rated at more than 6,000 pounds gross vehicle weight.

(4) The term "average fuel economy" means average fuel economy, as determined under section 2003 of this title.

(5) The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(6) The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under section 2003(d) of this title.

(7) The term "average fuel economy standard" means a performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in a model year.

(8) The term "manufacturer" means any person engaged in the business of manufacturing automobiles. The Secretary shall prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of such automobile for purposes of this subchapter. Such term also includes any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe.

(9) The term "manufacture" (except for purposes of section 2002(c) of this title) means to produce or assemble in the customs territory of the United States, or to import.

(10) The term "import" means to import into the customs territory of the United States.

(11) The term "model type" means a particular class of automobile as determined, by rule, by the EPA Administrator, after consultation and coordination with the Secretary.

(12) The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "Secretary" means the Secretary of Transportation.

(14) The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

US-X-a-1(ii)

EFFECTIVE DATE OF 1980 AMENDMENT

Section 9 of Pub. L. 96-425 provided that: "Except as otherwise provided in this Act [see Effective Date of 1980 Amendment note set out under section 2002 of this title], the amendments made by this Act [amending sections 1901, 2001, 2002(b), (c), (d), (g)-(k), 2003, 2005, 2008(b)(1)(A) and 2012 of this title and enacting provisions set out as notes under sections 1901, 2001, and 2002 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1980]."

CONGRESSIONAL DECLARATION OF PURPOSE OF 1980 AMENDMENT

Section 2 of Pub. L. 96-425 provided that: "It is the purpose of this Act [amending sections 1901, 2001, 2002, 2003, 2005, 2007, 2008 and 2012 of this title and enacting provisions set out as notes under sections 1901, 2001, and 2002 of this title]—

"(1) to amend certain Federal automobile fuel economy requirements to improve fuel efficiency, and thereby facilitate conservation of petroleum and reduce petroleum imports, and

"(2) to encourage full employment in the domestic automobile manufacturing sector."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2002, 2004, 2006, 2012 of this title; title 26 section 4064; title 42 section 6291.

§ 2002. Average fuel economy standards

(a) Standards for passenger vehicles manufactured after 1977; review of standards; report to Congress; standards for passenger automobiles manufactured from 1981 through 1984; amendment of standards

(1) Except as otherwise provided in paragraph (4) or in subsection (c) or (d) of this section, the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1977 shall not be less than the number of miles per gallon established for such model year under the following table:

Model year:	Average fuel economy standard (in miles per gallon)
1978	18.0.
1979	19.0.
1980	20.0.
1981	Determined by Secretary under paragraph (3) of this subsection.
1982	Determined by Secretary under paragraph (3) of this subsection.
1983	Determined by Secretary under paragraph (3) of this subsection.
1984	Determined by Secretary under paragraph (3) of this subsection.
1985 and thereafter	27.5.

(2) Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this subchapter. The review required to be transmitted not later than January 15, 1979, shall include a comprehensive analysis of the program required by this subchapter. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standard for model year 1985 as specified in paragraph (1) of this subsection, and any legislative recommendations the Secretary or the EPA Administrator may have for improving the program required by this suchapter.

(3) Not later than July 1, 1977, the Secretary shall prescribe, by rule, average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. Any such standard shall apply to each manufacturer (except as provided in subsection (c) of this section), and shall be set for each such model year at a level which the Secretary determines (A) is the maximum feasible average fuel economy level, and (B) will result in steady progress toward meeting the average fuel economy standard established by or pursuant to this subsection for model year 1985.

(4) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5 miles per gallon, or of decreasing any such standard to a level below 26.0 miles per gallon, shall be submitted to the Congress in accordance with section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421], and shall not take effect if either House of the Congress disapproves such amendment in accordance with the procedures specified in such section.

(5) For purposes of considering any modification which is submitted to the Congress under paragraph (4), the 5 calendar days specified in section 551(f)(4)(A) of the Energy Policy and Conservation Act [42 U.S.C. 6421(f)(4)(A)] shall be lengthened to 20 calendar days, and the 15 calendar days specified in section 551(c) and (d) of such Act [42 U.S.C. 6421(c) and (d)] shall be lengthened to 60 calendar days.

(b) Standards for other than passenger automobiles

The Secretary shall, by rule, prescribe average fuel economy standards for automobiles which are not passenger automobiles and which are manufactured by any manufacturer in each model year which begins more than 30 months after December 22, 1975. Such rules may provide for separate standards for different classes of such automobiles (as determined by the Secretary), and such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

(c) Exemptions for manufacturers of limited number of cars

(1) On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger auto-

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mobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a) of this section. An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (a) of this section is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this subsection applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in such model year.

(2) Any manufacturer may elect in any application submitted under paragraph (1) to have the applications for, and administrative determinations regarding, exemptions and alternative average fuel economy standards be consolidated for two or more of the model years after model year 1980 and before model year 1986. The Secretary may grant an exemption and set an alternative standard or standards for all model years covered by such application.

(d) Application for modification of standards

(1) Any manufacturer may apply to the Secretary for modification of an average fuel economy standard applicable under subsection (a) of this section to such manufacturer for model year 1978, 1979, or 1980. Such application shall contain such information as the Secretary may require by rule, and shall be submitted to the Secretary within 24 months before the beginning of the model year for which such modification is requested.

(2)(A) If a manufacturer demonstrates and the Secretary finds that—

(i) a Federal standards fuel economy reduction is likely to exist for such manufacturer for the model year to which the application relates, and

(ii) such manufacturer applied a reasonably selected technology,

the Secretary shall, by rule, reduce the average fuel economy standard applicable under subsection (a) of this section to such manufacturer by the amount of such manufacturer's Federal standards fuel economy reduction, rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the Secretary). To the maximum extent practicable, prior to making a finding under this paragraph with respect to an application, the Secretary shall request, and the EPA Administrator shall supply, test results collected pursuant to section 2003(d) of this title for all automobiles covered by such application.

(B)(i) If the Secretary does not find that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), he shall deny the application of such manufacturer.

(ii) If the Secretary—

(I) finds that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), and

(II) does not find that such manufacturer applied a reasonably selected technology,

the average fuel economy standard applicable under subsection (a) of this section to such manufacturer shall, by rule, be reduced by an amount equal to the Federal standards fuel economy reduction which the Secretary finds would have resulted from the application of a reasonably selected technology.

(3) For purposes of this subsection:

(A) The term "reasonably selected technology" means a technology which the Secretary determines it was reasonable for a manufacturer to select, considering (i) the Nation's need to improve the fuel economy of its automobiles, and (ii) the energy savings, economic costs, and lead-time requirements associated with alternative technologies practicably available to such manufacturer.

(B) The term "Federal standards fuel economy reduction" means the sum of the applicable fuel economy reductions determined under subparagraph (C).

(C) The term "applicable fuel economy reduction" means a number of miles per gallon equal to—

(i) the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect, minus

(ii) 0.5 mile per gallon.

(D) Each of the following is a category of Federal standards; [1]

(i) Emissions standards under section 202 of the Clean Air Act [42 U.S.C. 7521] and emissions standards applicable by reason of section 209(b) of such Act [42 U.S.C. 7543(b)].

(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.].

(iii) Noise emission standards under section 6 of the Noise Control Act of 1972 [42 U.S.C. 4905].

(iv) Property loss reduction standards under subchapter I of this chapter.

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(E) In making the determination under this subsection, the Secretary (in accordance with such methods as he shall prescribe by rule) shall assume a production mix for such manufacturer which would have achieved the average fuel economy standard for such model year had standards described in subparagraph (D) applicable to model year 1975 remained the only standards in effect.

(4) The Secretary may, for the purposes of conducting a proceeding under this subsection, consolidate one or more applications filed under this subsection.

(e) Determination of maximum feasible average fuel economy

For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider—

(1) technological feasibility;

(2) economic practicability;

(3) the effect of other Federal motor vehicle standards on fuel economy; and

(4) the need of the Nation to conserve energy.

(f) Amendment of average fuel economy standards

(1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a)(3), (b), or (c) of this section, so long as such standard, as amended, meets the requirements of subsection (a)(3), (b), or (c) of this section, as the case may be.

(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be—

(A) promulgated, and

(B) if required by paragraph (4) of subsection (a) of this section, submitted to the Congress,

at least 18 months prior to the beginning of the model year to which such amendment will apply.

(g) Exemption of emergency vehicles from fuel economy standards

(1) At the election of any manufacturer, the fuel economy of any emergency vehicle shall not be taken into account in applying any fuel economy standard prescribed by or under subsection (a), (b), or (c) of this section. Any manufacturer electing to have the provisions of this subsection shall provide written notice of that election to the Secretary and to the Environmental Protection Agency Administrator.

(2) For purposes of paragraph (1), the term "emergency vehicle" means any automobile manufactured primarily for use—

(A) as an ambulance or combination ambulance-hearse,

(B) by the United States or by a State or local government for police or other law enforcement purposes, or

(C) for other emergency uses prescribed by the Secretary of Transportation by regulation.

(h) Application of other laws

Proceedings under subsection (a)(4) or (d) of this section shall be conducted in accordance with section 553 of title 5 except that interested persons shall be entitled to make oral as well as written presentations. A transcript shall be taken of any oral presentations.

(i) Consultation with Secretary of Energy; impact of proposed standards upon conservation goals; comments

The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section. The Secretary shall, before issuing any notice proposing under subsection (a), (b), (d), or (f) of this section, to establish, reduce, or amend an average fuel economy standard, provide the Secretary of Energy with a period of not less than ten days from the receipt of the notice during which the Secretary of Energy may, upon concluding that the proposed standard would adversely affect the conservation goals set by the Secretary of Energy, provide written comments to the Secretary concerning the impacts of the proposed standard upon those goals. To the extent that the Secretary does not revise the proposed standard to take into account any comments by the Secretary of Energy regarding the level of the proposed standard, the Secretary shall include the unaccommodated comments in the notice.

(j) Notification of Secretary of Energy; comments

The Secretary shall, before taking action on any final standard under this section or any modification of or exemption from such standard, notify the Secretary of Energy and provide such Secretary with a reasonable period of time to comment thereon.

(k) Adjustments or relief regarding standards for other than passenger automobiles

(1) On the petition of any manufacturer for any model year beginning after model year 1981 and before model year 1986, the Secretary may conduct an examination of the impacts on that manufacturer or a class of manufacturers of any standard under subsection (b) of this section applicable to 4-wheel drive automobiles. If after consideration of the results of that examination the Secretary finds in accordance with paragraph (2) that the manufacturer has demonstrated that such manufacturer or class of manufacturers would not otherwise be able to comply with such standard for that model year as it applies to 4-wheel drive automobiles without causing severe economic impacts, such as plant closures or reduction in employment in the United States related to motor vehicle manufacturing, the Secretary shall, by order, make an adjustment or otherwise provide relief regarding—

(A) the manner by which the average fuel economy of that manufacturer or class of manufacturers is calculated for purposes of that standard as it applies to 4-wheel drive automobiles, or

(B) other aspects regarding the application of that standard to the manufacturer or class of manufacturers with respect to such automobiles to the extent consistent with the provisions of this subchapter.

(2) Any finding by the Secretary under paragraph (1) shall be made (A) after notice and a reasonable opportunity for written or oral comment, and (B) after consideration of the benefits available under the amendments made by the Automobile Fuel Efficiency Act of 1980.

(3) The authority of the Secretary under this subsection to make any adjustment or provide other relief shall not be effective for any model year after model year 1985.

(4) The Secretary shall notify the Congress of any adjustment or other relief provided under this subsection in the first annual report submitted to the Congress under section 2012 of this title after the order is issued providing for that adjustment or relief.

(5)(A) Any final decision of the Secretary under this subsection shall be made, and notice thereof published in the Federal Register, not later than 120 days after the date of the petition involved. The Secretary may extend such period to a specified date if the Secretary publishes notice thereof in the Federal Register, together with the reasons for such extension. Any such decision by the Secretary shall become final 30 days after the publication of the notice of final decision unless a petition for judicial review is filed under subparagraph (B).

(B) Any person adversely affected by such a decision may, not later than 30 days after publication of notice of such decision, file a petition for review of such decision with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides, or in which the principal place of business of such person is located. The United States court of appeals involved shall have jurisdiction to review such decision in accordance with section 706(2)(A) through (D) of title 5, and to affirm, remand, or set aside the decision of the Secretary. Except as otherwise provided in this subparagraph, section 2004(c) and (d) of this title shall apply to such review to the same extent and manner as it applies with respect to review of any rule prescribed under this section or section 2001, 2003, or 2006 of this title.

(6) The availability of any adjustment or other relief under this subsection shall not be taken into account in prescribing standards under subsection (b) of this section.

(*l*) Credits for exceeding average fuel economy standards

(1)(A) For purposes of this subchapter, credits under this subsection shall be considered to be available to any manufacturer upon the completion of the model year in which such credits are earned under subparagraph (B) unless under subparagraph (C) the credits are made available for use at a time prior to the model year in which earned.

(B) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under subsection (a) or (c) of this section (determined by the Secretary without regard to any adjustment under subsection (d) of this section or any credit under this subsection), such manufacturer shall be entitled to a credit, calculated under subparagraph (C), which—

(i) shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(C)(i) At any time prior to the end of any model year, a manufacturer which has reason to believe that its average fuel economy for passenger automobiles will be below such applicable standard for that model year may submit a plan demonstrating that such manufacturer will earn sufficient credits under subparagraph (B) within the next 3 model years which when taken into account would allow the manufacturer to meet that standard for the model year involved.

(ii) Such credits shall be available for the model year involved subject to—

(I) the Secretary approving such plan; and

(II) the manufacturer earning such credits in accordance with such plan.

(iii) The Secretary shall approve any such plan unless the Secretary finds that it is unlikely that the plan will result in the manufacturer earning sufficient credits to allow the manufacturer to meet the standard for the model year involved.

(iv) The Secretary shall provide notice to any manufacturer in any case in which the average fuel economy of that manufacturer is below the applicable standard under subsection (a) or (c) of this section, after taking into account credits available under subparagraph (B)(i), and afford the manufacturer a reasonable period (of not less than 60 days) in which to submit a plan under this subparagraph.

(D) The amount of credit to which a manufacturer is entitled under this paragraph shall be equal to—

(i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in the model year in which the credit is earned pursuant to this paragraph exceeds the applicable average fuel economy standard established under subsection (a) or (c) of this section, multiplied by

(ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(E) The Secretary shall take credits into account for any model year on the basis of the number of tenths of a mile per gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the volume of passenger automobiles manufactured that model year by the manufacturer. Credits once taken into account

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for any model year shall not thereafter be available for any other model year. Prior to taking any credit into account, the Secretary shall provide the manufacturer involved with written notice and reasonable opportunity to comment thereon.

(2) Credits for manufacturers of automobiles which are not passenger automobiles shall be earned and be available to be taken into account for model years in which the average fuel economy of such class of automobiles is below the applicable average fuel economy standard established under subsection (b) of this section to the same extent and in the same manner as provided for under paragraph (1). Not later than 60 days after October 10, 1980, the Secretary shall prescribe regulations to carry out the provisions of this paragraph.

(3) Whenever a civil penalty has been assessed and collected under section 2008 of this title from a manufacturer who is entitled to a credit under this subsection, the Secretary of the Treasury shall refund to such manufacturer the amount of the civil penalty so collected to the extent that penalty is attributable to credits available under this subsection.

(4) The Secretary may prescribe rules for purposes of carrying out the provisions of this subsection.

(Pub. L. 92-513, title V, § 502, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 902, and amended Pub. L. 95-91, title III, § 305, Aug. 4, 1977, 91 Stat. 580; Pub. L. 96-425, §§ 3(a)(1), 5, 6(b), 7, 8(c), (d), Oct. 10, 1980, 94 Stat. 1821, 1825, 1826, 1828.)

Code: US-X-a-5 (i)

Country: US

Type of Regulation: Safety

Name of Agency: Highway Traffic Safety Administration/ Dept. of Transportation

Program Title: Vehicle Safety Standards

Initiation and Termination Dates: 1966, amended 1970

Relevant Legislation: National Traffic and Motor Vehicle Safety Act, 1966 (15 USC, in particular *1392(a), 1398, 1410.

§ 1392. Motor vehicle safety standards

(a) Establishment

The Secretary shall establish by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

(b) Applicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety standard under this subchapter.

(c) Effective date of orders

Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Supremacy of Federal standards; allowable higher standards for vehicles used by Federal or State governments

Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(e) Amendment and revocation of standards

The Secretary may by order amend or revoke any Federal motor vehicle safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(f) Factors to be considered in prescribing standards

In prescribing standards under this section, the Secretary shall—

(1) consider relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this chapter;

(2) consult with the Vehicle Equipment Safety Commission and such other State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which such standards will contribute to carrying out the purposes of this chapter.

(g) Interstate motor carriers and carriers of explosives and other dangerous articles

In prescribing safety regulations covering motor vehicles subject to subchapter II of chapter 105 of title 49 or the Transportation of Explosives Act, as amended (18 U.S.C. 831-835), the Secretary shall not adopt or continue in effect any safety regulation which differs from a motor vehicle safety standard issued by the Secretary under this subchapter, except that nothing in this subsection shall be deemed to prohibit the Secretary from prescribing for any motor vehicle operated by a carrier subject to regulation under either or both of such subchapter and Act, a safety regulation which imposes a higher standard of performance subsequent to its manufacture than that required to comply with the applicable Federal standard at the time of manufacture.

(h) Issuance of initial Federal safety standards

The Secretary shall issue initial Federal motor vehicle safety standards based upon existing safety standards on or before January 31, 1967. On or before January 31, 1968, the Secretary shall issue new and revised Federal motor

(i) Schoolbus and schoolbus equipment safety standards; study and report to Congress

(1)(A) Not later than 6 months after October 27, 1974, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

(i) Emergency exits.

(ii) Interior protection for occupants.

(iii) Floor strength.

(iv) Seating systems.

(v) Crash worthiness of body and frame (including protection against rollover hazards).

(vi) Vehicle operating systems.

(vii) Windows and windshields.

(viii) Fuel systems.

(B) Not later than 15 months after October 27, 1974, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (viii) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after April 1, 1977.

(2) The Secretary may prescribe regulations requiring that any schoolbus be test-driven by

§ 1398. Civil penalties; Secretary's authority to compromise

(a) Amount of penalties

Whoever violates any provision of section 1397 of this title, or any regulation issued thereunder, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Such violation of a provision of section 1397 of this title, or regulations issued thereunder, shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

(b) Compromise of penalties

Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(Pub. L. 89-563, title I, § 109, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93-492, title I, § 103(b), Oct. 27, 1974, 88 Stat. 1478.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492 increased to $800,000 from $400,000 the limitation of maximum civil penalty for related series of violations.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1410. Exemption from safety standards of motor vehicles

(a) Eligibility; procedure; criteria for temporary exemption or renewal of exemption; publication of notice of decision in Federal Register

Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as required in this section and as the Secretary shall prescribe, the Secretary may, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt or renew the exemption of a motor vehicle from any motor vehicle safety standard established under this subchapter if he finds—

(1)(A) that compliance would cause such manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted,

(B) that such temporary exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought,

(C) that such temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle, or

(D) that requiring compliance would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles; and

(2) that such temporary exemption would be consistent with the public interest and the objectives of the chapter.

Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

(b) Permanent labeling of exempted motor vehicle; contents; notification of dealer and first purchaser of exemption

The Secretary shall require permanent labeling of each exempted motor vehicle. Such label shall either name or describe each of the standards from which the motor vehicle is exempted and be affixed to such exempted vehicles. The Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than the resale of such exempted motor vehicle in such manner as he deems appropriate.

(c) Limitation periods for exemption or renewal; reapplication for renewal

(1) No exemption or renewal granted under paragraph (1)(A) of subsection (a) of this sec-

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tion shall be granted for a period longer than three years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

(2) No exemption or renewal granted under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section shall be granted for a period longer than two years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

(d) Manufacturers eligible for exemptions

(1) No manufacturer whose total motor vehicle production in its most recent year of production exceeds 10,000, as determined by the Secretary, shall be eligible to apply for an exemption under paragraph (1)(A) of subsection (a) of this section.

(2) No manufacturer shall be eligible to apply for exemption under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section for more than 2,500 vehicles to be sold in the United States in any 12 month period, as determined by the Secretary.

(e) Applications for exemptions; contents

Any manufacturer applying for an exemption on the basis of paragraph (1)(A) of subsection (a) of this section shall include in the application a complete financial statement showing the basis of the economic hardship and a complete description of its good faith efforts to comply with the standards. Any manufacturer applying for an exemption on the basis of paragraph (1)(B) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing the innovational nature of the safety features and a detailed analysis establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which the exemption is sought. Any manufacturer applying for an exemption on the basis of paragraph (1)(C) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing that the safety of such vehicle is not unreasonably degraded and that such vehicle is a low-emission motor vehicle. Any manufacturer applying for an exemption on the basis of paragraph (1)(D) of subsection (a) of this section shall include in the application a detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall level of safety of nonexempted motor vehicles.

(f) Promulgation of regulations for applications; disclosure of information contained in application

The Secretary shall promulgate regulations within 90 days (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor) after October 25, 1972, for applications for exemption from any motor vehicle safety standard provided for in this section. The Secretary may make public within 10 days of the date of filing an application under this section all information contained in such application or other information relevant thereto unless such information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

(g) Definitions

For the purpose of this section, the term "low-emission motor vehicle" means any motor vehicle which—

(1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 7521 of title 42 at the time of manufacture to that type of vehicle; and

(2) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 7521 of title 42 at the time of manufacture to that type of vehicle.

(Pub. L. 89-563, title I, § 123, as added Pub. L. 90-283, Apr. 10, 1968, 82 Stat. 72, and amended Pub. L. 92-548, § 3, Oct. 25, 1972, 86 Stat. 1159.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-548 added provisions making certain manufacturers under subsec. (d) of this section ineligible to apply for exemptions, requiring the Secretary to follow a prescribed procedure in granting temporary exemptions or renewing exemptions, including publication in the Federal Register of notice of each temporary exemption, and expanding the criteria for determining the necessity for granting exemptions, and struck out reference to limited production motor vehicles.

Subsec. (b). Pub. L. 92-548 substituted provisions requiring the permanent labeling of each exemption motor vehicle, and provisions that the Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than resale of such exempted motor vehicle in such manner as he deems appropriate, for provisions that the Secretary shall require, in such manner as he deems appropriate, the notification of the dealer and of the first purchaser of a limited production motor vehicle (not including the dealer of such manufacturer) that such vehicle has been exempted from certain motor vehicle safety standards, and the standards from which it is exempted.

Subsec. (c). Pub. L. 92-548 substituted provisions setting forth limitation periods for length of exemption or renewal and requirements relating to reapplication for renewal, for provisions defining the term "limited production motor vehicle".

Subsec. (d). Pub. L. 92-548 substituted provisions setting forth eligibility requirements for manufacturers seeking exemptions, for provisions terminating the authority of the Secretary to grant exemptions three years after Apr. 10, 1968, and limiting the force and effect of exemptions to three years after the date such exemption was originally granted.

Subsecs. (e) to (g). Pub. L. 92-548 added subsecs. (e) to (g).

§ 1410a. Petitions of interested persons

(a) Requests for Secretary's commencement of proceedings

Any interested person may file with the Secretary a petition requesting him (1) to commence a proceeding respecting the issuance of an order pursuant to section 1392 of this title or to commence a proceeding to determine whether to issue an order pursuant to section 1412(b) of this title.

(b) Contents; factual statement; description of relief

Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

(c) Public hearings or appropriate investigation or proceeding

The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

(d) Time of determination; commencement of proceedings upon grant of petition; publication in Federal Register of reasons for denial of petition

Within 120 days after filing of a petition described in subsection (b) of this section, the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

(e) Additional remedies

The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 89-563, title I, § 124, as added Pub. L. 93-492, title I, § 106, Oct. 27, 1974, 88 Stat. 1481.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as an Effective Date of 1974 Amendment note under section 1409 of this title.

§ 1410b. Occupant restraint systems

(a) Amendment of Federal motor vehicle safety standard numbered 208; effective date

Not later than 60 days after October 27, 1974, the Secretary shall amend the Federal motor vehicle safety standard numbered 208 (49 CFR 571.208), so as to bring such standard into conformity with the requirements of paragraphs (1), (2), and (3) of subsection (b) of this section. Such amendment shall take effect not later than 120 days after October 27, 1974.

(b) Federal motor vehicle safety standard requirements

After the effective date of the amendment prescribed under subsection (a) of this section:

(1) No Federal motor vehicle safety standard may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

any continuous buzzer designed to indicate that safety belts are not in use, or any safety belt interlock system.

(2) Except as otherwise provided in paragraph (3), no Federal motor vehicle safety standard respecting occupant restraint systems may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

an occupant restraint system other than a belt system.

(3)(A) Paragraph (2) shall not apply to a Federal motor vehicle safety standard which provides that a manufacturer is permitted to comply with such standard by equipping motor vehicles manufactured by him with either—

(i) a belt system, or

(ii) any other occupant restraint system specified in such standard.

(B) Paragraph (2) shall not apply to any Federal motor vehicle safety standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c) of this section, unless it is disapproved by both Houses of Congress by concurrent resolution in accordance with subsection (d) of this section.

(C) Paragraph (2) shall not apply to a Federal motor vehicle safety standard if at the time of promulgation of such standard (i) the 60-day period determined under subsection (d) of this section has expired with respect to any previously promulgated standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section, and (ii) both Houses of Congress have not by concurrent resolution within such period disapproved such previously promulgated standard.

(c) Federal motor vehicle safety standard promulgation procedure; rule making requirement; data, views or arguments: presentation opportunity; transcript; notification of Congressional Committees; data, views, or arguments of Members of Congress; transmittal of standard to Congress and Congressional Committees

The procedure referred to in subsection (b)(3)(B) and (C) of this section in accordance with which the Secretary may elect to promulgate a standard is as follows:

(1) The standard shall be promulgated in accordance with section 1392 of this title, subject to the other provisions of this subsection.

(2) Section 553 of title 5 shall apply to such standard; except that the Secretary shall afford interested persons an opportunity for oral as well as written presentation of data, views, or arguments. A transcript shall be kept of any oral presentation.

(3) The chairman and ranking minority members of the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee shall be notified in writing of any proposed standard to which this section applies. Any Member of Congress may make an oral presentation of data, views, or arguments under paragraph (2).

(4) Any standard promulgated pursuant to this subsection shall be transmitted to both Houses of Congress, on the same day and to each House while it is in session. In addition, such standard shall be transmitted to the

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chairmen and ranking minority members of the committees referred to in paragraph (3).

(d) Concurrent resolution of disapproval during prescribed period; Federal motor vehicle safety standard effective upon expiration of such period

(1) A standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section shall not be effective if, during the first period of 60 calendar days of continuous session of Congress after the date of transmittal to Congress, both Houses of Congress pass a concurrent resolution the matter after the resolving clause of which reads as follows: "The Congress disapproves the Federal motor vehicle safety standard transmitted to Congress on ——, 19—."; (the blank space being filled with date of transmittal of the standard to Congress). If both Houses do not pass such a resolution during such period, such standard shall not be effective until the expiration of such period (unless the standard specifies a later date).

(2) For purposes of this section—

(A) continuity of session of Congress is broken only by an adjournment sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(e) Judicial review of Federal motor vehicle safety standard

This section shall not impair any right which any person may have to obtain judicial review of a Federal motor vehicle safety standard.

(f) Definitions

For purposes of this section:

(1) The term "safety belt interlock" means any system designed to prevent starting or operation of a motor vehicle if one or more occupants of such vehicle are not using safety belts.

(2) The term "belt system" means an occupant restraint system consisting of integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants. With respect to (A) motor vehicles other than passenger vehicles, (B) convertibles, and (C) open-body type vehicles, such term also includes an occupant restraint system consisting of lap belts or lap belts combined with detachable shoulder belts.

(3) The term "occupant restraint system" means a system the principal purpose of which is to assure that occupants of a motor vehicle remain in their seats in the event of a collision or rollover. Such term does not include a warning device designed to indicate that seat belts are not in use.

(4) The term "continuous buzzer" means a buzzer other than a buzzer which operates only during the 8 second period after the ignition is turned to the "start" or "on" position.

(Pub. L. 89-563, title I, § 125, as added Pub. L. 93-492, title I, § 109, Oct. 27, 1974, 88 Stat. 1482, and amended S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980.)

Change of Name

The name of the Committee on Interstate and Foreign Commerce of the House of Representatives was changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution 549, Ninety-sixth Congress, Mar. 25, 1980.

The name of the Commerce Committee of the Senate was changed to Committee on Commerce, Science, and Transportation by Senate Resolution 4, approved Feb. 4, 1977.

Section Referred to in Other Sections

This section is referred to in section 1397 of this title.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

Amendments

1974—Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470, added heading "Part B—Discovery, Notification, and remedy of Motor Vehicle Defects".

Part Referred to in Other Sections

This part is referred to in section 1397 of this title.

Code: US-X-a-6 (i)

Country: US

Type of Regulation: Environmental/Health

Name of Agency: Federal Aviation Authority (FAA)

Program Title: Standard Setting and Aircraft Noise Enforcement

Initiation and Termination Dates: 1 December, 1969

Relevant Legislation: Noise Control and Abatement Act. 42 USC 4904, 4910

§ 4904. Identification of major noise sources

(a) Development and publication of criteria

(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of October 27, 1972, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of October 27, 1972, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) Compilation and publication of reports on noise sources and control technology

The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after October 27, 1972.

(c) Supplemental criteria and reports

The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Publication in Federal Register

Any report (or revision thereof) under subsection (b)(1) of this section identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

(Pub. L. 92-574, § 5, Oct. 27, 1972, 86 Stat. 1236.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4905 of this title.

§ 4910. Enforcement

(a) Criminal penalties

(1) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(b) Separate violations

For the purpose of this section, each day of violation of any paragraph of section 4909(a) of this title shall constitute a separate violation of that section.

(c) Actions to restrain violations

The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 4909(a) of this title.

(d) Orders issued to protect the public health and welfare; notice; opportunity for hearing

(1) Whenever any person is in violation of section 4909(a) of this title, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5.

(e) "Person" defined

The term "person," as used in this section does not include a department, agency, or instrumentality of the United States.

(Pub. L. 92-574, § 11, Oct. 27, 1972, 86 Stat. 1242; Pub. L. 95-609, § 4, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-609 redesignated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4909, 4916, 4917 of this title.

Code: US-X-a-7

Country: US

Type of Regulation: Trade Settlements

Name of Agency or Department: Federal Trade Commission

Program Title: Informal Dispute Settlement and Consent Orders/Agreement

Initiation and Termination Dates: 1976 -

Relevant Legislation: Federal Trade Commission Act. Sect 5, Sect. 19(b); 15 USC P45 c 1976.

§ 45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(2) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(a)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person.

The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however*, That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Precedence of proceedings; exemption from liability

Such proceedings in the court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) Definition of mandate

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(*l*) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts [illegible] practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a [illegible] penalty action under paragraph (1)(B) [illegible] issues of fact in such action against such defendant shall be tried de novo.

(3) The Commission may compromise [illegible] settle any action for a civil penalty if such compromise or settlement is accompanied [illegible] public statement of its reasons and is approved by the court.

(Sept. 26, 1914, ch. 311, § 5, 38 Stat. 71[illegible] 21, 1938, ch. 49, § 3, 52 Stat. 111; June [illegible] ch. 601, 52 Stat. 977; June 25, 1948, ch. [illegible] § 32(a), 62 Stat. 991; May 24, 1949, ch. [illegible] 63 Stat. 107; Mar. 16, 1950, ch. 61, [illegible] Stat. 21; July 14, 1952, ch. 745, § 2, 66 Stat. [illegible] Aug. 23, 1958, Pub. L. 85-726, title [illegible]

Code: US-X-a-9 (i)

Country: US

Type of Regulation: Fair Trade

Name of Agency or Department: Securities and Exchange Commission (SEC)

Program Title: Uniform Code of Arbitration: Oversight of Self-Regulatory Organizations

Initiation and Termination Dates: 1977 -

Relevant Legislation: Securities Reform Act 15 USC 78s(c)

§ 78s. Registration, responsibilities, and oversight of self-regulatory organizations

(a) Registration procedures; notice of filing; other regulatory agencies

(1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78o-3, or 78q-1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities association, the registration of any association affiliated therewith shall automatically terminate.

(b) Proposed rule changes; notice; proceedings

(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within one hundred eighty days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(3)(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and

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the purposes of this subsection, may specify as without the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal and State law. At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be "final agency action" for purposes of section 704 of title 5.

(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing whereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate regulatory agency's (i) determination that the proposed rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of this subsection of such appropriate regulatory agency's (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(D) The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency's (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(c) Amendment by Commission of rules of self-regulatory organizations

The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter, in the following manner:

(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the self-regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be

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based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5 for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under this chapter.

(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this chapter to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

(d) Notice of disciplinary action taken by self-regulatory organization against a member or participant; review of action by appropriate regulatory agency; procedure

(1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter.

(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(e) Disposition of review; cancellation, reduction, or remission of sanction

(1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this chapter, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

(f) Dismissal of review proceeding

In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regula-

Code: US-X-b-1 (i)

Country: US

Type of Regulation: Trade

Name of Agency or Department: Commodities Futures Trading Commission (CFTC)

Program Title: Reparations Procedure

Initiation and Termination Dates: 1976; Amended 1982; in force 1984 -

Relevant Legislation: Commodity Exchange Act Publ. L 93-463; Publ. L 97-444, 96 Stat. 2308; USC P18(b).

§ 18. Complaints against registered persons

(a) Petition for actual damages

Any person complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.

(b) Rules and regulations; control over right of appeal

The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

(c) Bond requirement when complainant is nonresident; waiver

In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(d) Enforcement of reparation award

If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders.

Code: US-X-b-2 (i)

Country: US

Type of Regulation: Pension Benefits - Arbitration

Name of Agency or Department: Pension Benefit Guarantee Corp. (PBGC)

Program Title: Arbitration Rules

Initiation and Termination Dates: 26 September, 1985 -

Relevant Legislation: Multiemployers Pension Plan Amendments Act

§ 1401. Resolution of disputes

(a) Arbitration proceedings; matters subject to arbitration, procedures applicable, etc.

(1) Any dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 1381 through 1399 of this title shall be resolved through arbitration. Either party may initiate the arbitration proceeding within a 60-day period after the earlier of—

(A) the date of notification to the employer under section 1399(b)(2)(B) of this title, or

(B) 120 days after the date of the employer's request under section 1399(b)(2)(A) of this title.

The parties may jointly initiate arbitration within the 180-day period after the date of the plan sponsor's demand under section 1399(b)(1) of this title.

(2) An arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures to be promulgated by the corporation. The plan sponsor may purchase insurance to cover potential liability of the arbitrator. If the parties have not provided for the costs of the arbitration, including arbitrator's fees, by agreement, the arbitrator shall assess such fees. The arbitrator may also award reasonable attorney's fees.

(3)(A) For purposes of any proceeding under this section, any determination made by a plan sponsor under sections 1381 through 1399 of this title and section 1405 of this title is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

(B) In the case of the determination of a plan's unfunded vested benefits for a plan year, the determination is presumed correct unless a party contesting the determination shows by a preponderance of evidence that—

(i) the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations), or

(ii) the plan's actuary made a significant error in applying the actuarial assumptions or methods.

(b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings

(1) If no arbitration proceeding has been initiated pursuant to subsection (a) of this section, the amounts demanded by the plan sponsor under section 1399(b)(1) of this title shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.

(2) Upon completion of the arbitration proceedings in favor of one of the parties, any party thereto may bring an action, no later than 30 days after the issuance of an arbitrator's award, in an appropriate United States district court in accordance with section 1451 of this title to enforce, vacate, or modify the arbitrator's award.

(3) Any arbitration proceedings under this section shall, to the extent consistent with this subchapter, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpena power), and enforced in United States courts as an arbitration proceeding carried out under title 9.

(c) Presumption respecting finding of fact by arbitrator

In any proceeding under subsection (b) of this section, there shall be a presumption, rebuttable only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator were correct.

(d) Payments by employer prior and subsequent to determination by arbitrator; adjustments; failure of employer to make payments

Payments shall be made by an employer in accordance with the determinations made under this part until the arbitrator issues a final decision with respect to the determination submitted for arbitration, with any necessary adjustments in subsequent payments for overpayments or underpayments arising out of the decision of the arbitrator with respect to the determination. If the employer fails to make timely payment in accordance with such final decision, the employer shall be treated as being delinquent in the making of a contribution required under the plan (within the meaning of section 1145 of this title).

(e) Furnishing of information by plan sponsor to employer respecting computation of withdrawal liability of employer; fees

If any employer requests in writing that the plan sponsor make available to the employer general information necessary for the employer to compute its withdrawal liability with respect to the plan (other than information which is unique to that employer), the plan sponsor shall furnish the information to the employer without charge. If any employer requests in writing that the plan sponsor make an estimate of such employer's potential withdrawal liability with respect to the plan or to provide information unique to that employer, the plan sponsor may require the employer to pay the reasonable cost of making such estimate or providing such information.

(Pub. L. 93-406, title IV, § 4221, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1239.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1402. Reimbursements for uncollectible withdrawal liability

(a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.

By May 1, 1982, the corporation shall establish by regulation a supplemental program to reimburse multiemployer plans for withdrawal liability payments which are due from employers and which are determined to be uncollectible for reasons arising out of cases or proceedings involving the employers under title 11, or similar cases or proceedings. Participation in the supplemental program shall be on a voluntary basis, and a plan which elects coverage under the program shall pay premiums to the corporation in accordance with a premium schedule which shall be prescribed from time to time by the corporation. The premium schedule shall contain such rates and bases for the application of such rates as the corporation considers to be appropriate.

(b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons

The corporation may provide under the program for reimbursement of amounts of withdrawal liability determined to be uncollectible for any other reasons the corporation considers appropriate.

(c) Payment of cost of program

The cost of the program (including such administrative and legal costs as the corporation considers appropriate) may be paid only out of premiums collected under such program.

(d) Terms and conditions, limitations, etc., of supplemental program

The supplemental program may be offered to eligible plans on such terms and conditions, and with such limitations with respect to the payment of reimbursements (including the exclusion of de minimis amounts of uncollectible employer liability, and the reduction or elimination of reimbursements which cannot be paid from collected premiums) and such restrictions on withdrawal from the program, as the corporation considers necessary and appropriate.

(e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers

The corporation may enter into arrangements with private insurers to carry out in whole or in part the program authorized by this section and may require plans which elect coverage

§ 1403. Withdrawal liability payment fund

(a) Establishment of or participation in fund by plan sponsors

The plan sponsors of multiemployer plans may establish or participate in a withdrawal liability payment fund.

(b) Definition

For purposes of this section, the term "withdrawal liability payment fund", and the term "fund", mean a trust which—

(1) is established and maintained under section 501(c)(22) of title 26,

(2) maintains agreements which cover a substantial portion of the participants who are in multiemployer plans which (under the rules of the trust instrument) are eligible to participate in the fund,

(3) is funded by amounts paid by the plans which participate in the fund, and

(4) is administered by a Board of Trustees, and in the administration of the fund there is equal representation of—

(A) trustees representing employers who are obligated to contribute to the plans participating in the fund, and

(B) trustees representing employees who are participants in plans which participate in the fund.

(c) Payments to plan; amount, criteria, etc.

(1) If an employer withdraws from a plan which participates in a withdrawal liability payment fund, then, to the extent provided in the trust, the fund shall pay to that plan—

(A) the employer's unattributable liability,

(B) the employer's withdrawal liability payments which would have been due but for section 1388, 1389, 1399, or 1405 of this title,

(C) the employer's withdrawal liability payments to the extent they are uncollectible.

(2) The fund may provide for the payment of the employer's attributable liability if the fund—

(A) provides for the payment of both the attributable and the unattributable liability of the employer in a single payment, and

(B) is subrogated to all rights of the plan against the employer.

(3) For purposes of this section, the term—

(A) "attributable liability" means the excess, if any, determined under the provisions of a plan not inconsistent with regulations of the corporation, of—

(i) the value of vested benefits accrued as a result of service with the employer, over

(ii) the value of plan assets attributed to the employer, and

Code: US-X-b-8(i)

Country: US

Type of Regulation: Trade - Written Warranties

Name of Agency or Department: Federal Trade Commission

Program Title: Informal Dispute Settlement Procedure Rule (FR 60190 (1975))

Initiation and Termination Dates: 1975 -

Relevant Legislation: Magnuson-Moss Warranty Act; 15 USC *2301-2310, in particular 2310 (a) (1)-(3)

§ 2310. Remedies in consumer disputes

(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) of this section except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d) of this section, the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) Prohibited acts

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action

would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims

(1) Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

Code: US-X-b-9 (i)

Country: US

Type of Regulation: Trade Settlements

Name of Agency or Department: Federal Trade Commission

Program Title: (Fast Trade Rule) for Administrative Law Judges (ALJ)

Initiation and Termination Dates: 12, November, 1985 -

Relevant Legislation: Rules of Practice and Procedure of the FTC Sect.3.21

The Federal Trade Commission, rejecting the objections of a number of lawyers who practice before it, has established a six-month deadline for the preparation of cases before its administrative law judges.

Even lawyers who oppose this mandatory "fast track" rule, which applies to FTC-initiated cases, agree that it will substantially increase the pace of proceedings before the FTC. The rule, effective November 12, requires the administrative law judge on each case to set a trial date within two weeks of the mandatory scheduling conference. That date cannot be more than six months away, unless the proceeding is unusually complex or there are circumstances "beyond control of the parties." *FTC Rules of Practice and Procedure*, §3.21.

Lawyers who oppose the change contend that it would give FTC attorneys an unfair advantage in preparing for hearings before administrative law judges, and for the subsequent litigation that often results when a company appeals an ALJ's ruling to a federal district court.

Attorneys who formally registered their objections when the proposed rule was published for comment in 1983 included a group of six prominent practitioners headed by James T. Halverson of New York's Shearman & Sterling, the chairman of the Antitrust Law Section of the American Bar Association.

"We felt it was a little bit of a Star Chamber procedure, because we don't have the time to prepare that they do," said Irving Scher, one of the signers of the Halverson statement and a partner at Weil, Gotshal & Manges in New York, who has practiced before the FTC for more than 20 years.

Head Start

"They have all the time they need to investigate, and they have broad powers. By the time they file they've finished their discovery and they don't have to reveal much of their case to you. They say, 'You'll have a chance to learn all that at the hearing,'" said Mr. Scher. "My experience has been that when I go to discovery, they start fighting it, which is a right I didn't have when they were investigating."

The commission, however, decided that many cases take longer than six months to reach trial only because the parties know the time is available.

"In the past, most Commission cases have not been brought to trial this rapidly," the FTC acknowledged in the Oct. 10 ruling that formally adopted the new regulation. "It is intended, as a result of these changes, that all cases that can be brought to trial within this schedule be prepared at this pace."

"We're not trying to harass people into settling because they don't have time to prepare their cases. We're only trying to eliminate unnecessary delay," said Marc L. Winerman, an attorney in the FTC general counsel's office. "The key issue is whether the respondents have enough time to prepare for trial. The commission's position is that they have sufficient time—except in extraordinary cases, which is why the exceptions exist."

The commission's ruling points out that, because of various pre-conference procedures that can take up to two months, the new rule really gives defense counsel eight months from the filing of an FTC complaint to prepare a defense. It goes on to cite a number of recent proceedings that were resolved within that amount of time.

Mr. Winerman said he did not know how long the average case takes, nor what percentage of recent cases have taken longer than the new rules would allow. "A lot are over in six months or less," he said, "but some cases have easily taken a decade."

The commission adopted the rule "on the general theory that things should be streamlined," said Mr. Winerman. "There wasn't any specific case that made everyone throw up their hands and say, 'We've got to change the rules.'"

The new rule attempts to quicken procedures in several ways. Besides the six-month deadline, for instance, the rule requires parties to exchange nonbinding statements of claims and defenses before the scheduling conference so that the issues can be focused early in the case. The rule also mandates that the scheduling conference be held no later than ten days after the filing of the last nonbinding statement, and the first such statement is due within ten days of the respondent's answer.

The new rule was one of several proposals for changes designed to speed up FTC proceedings. Other proposed changes included: dropping an exhortation to lawyers "to make every effort to avoid delay" and replacing it with a requirement that lawyers "complete each stage without delay"; mandating that ALJs set a target date for the completion of evidentiary hearings; authorizing ALJs to impose sanctions for noncompliance with the six-month deadline; and requiring that lawyers filing petitions or motions certify that they have made a "good faith" effort to settle the case, or at least reduce the number of contested issues.

The commission decided not to adopt the first three on the grounds that they are unnecessary. It did enact the last, which has aroused little controversy.

In its official ruling, the commission cited the growing importance of "effective case management," noting that Rule 16(b) of the Federal Rules of Civil Procedure had been modified in 1983 to require a scheduling order in most civil suits. The order must set time limits for joinder of parties, filing of motions and conduct of discovery, and also may set the dates for pretrial conferences, trial and other matters. That order must issue within 120 days of the filing of a complaint.

The judgment an ALJ must make in implementing the new FTC rule, the commission held, "is little different from the judgment a judge or magistrate must make under Rule 16."

Proposals for "fast track" rules are not limited to the FTC. Earlier this year, Richard McMillan Jr. and David B. Siegel of Washington, D.C.'s Crowell & Moring suggested that the Federal Rules of Civil Procedure be revised to allow parties the option of choosing a fast-track procedure in return for a guaranteed trial date, perhaps within 12 months. (*Alternatives*, April 1985.) Some state court programs, such as the Economical Litigation Project (ELP) run on an experimental basis in two Kentucky counties, also contain substantial fast-track elements.

Nor is this the first foray of the FTC into the field of alternative dispute resolution. In the past few years, the commission has established two large arbitration mechanisms for resolving consumers' disputes with a home construction company and an automobile manufacturer. (*Alternatives*, July 1985.)

The FTC's New Six-month Rule: Text and Rationale

Editor's Note: Reprinted below is Revised Section 3.21 of the Rules of Practice and Procedure of the Federal Trade Commission. The rule, which became effective November 12, is intended to expedite those adjudicative proceedings that are initiated by FTC complaints. The rule will be codified at 16 C.F.R. Part 3.

Immediately following the text of the new rule are excerpts from FTC comments explaining and justifying the revision. Those excerpts discuss the views of several commenters to the rule, including the FTC's administrative law judges ("ALJs"), the New York law firm of Sullivan & Cromwell and James T. Halverson, the chairman of the American Bar Association's Section of Antitrust Law. Mr. Halverson's remarks represent the individual views of himself and five other Section officials who frequently appear before the FTC. Footnotes have been omitted.

Section 3.21 is revised to read as follows:

§3.21 Prehearing Procedures

(a) Nonbinding statements—No later than ten days after the answer is filed by the last answering respondent, complaint counsel

US-X-b-9(ii)

sel shall file a nonbinding statement setting forth in detail the theory of the case, the issues to be tried, and what complaint counsel expect their evidence to prove. Not later than ten days after complaint counsel's statement is served, each respondent shall file a nonbinding statement setting forth in detail the respondent's theory of the defense, the issues to be tried, and what the respondent expects its evidence to prove. Such statements may be modified upon completion of discovery or at such other times as the Administrative Law Judge may direct.

(b) Scheduling conference—Not later than ten days after all respondents have filed the nonbinding statement required by subsection (a), the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address their factual and legal theories, potential stipulations of law, fact, or admissibility of evidence, a schedule of proceedings, possible limitations on discovery, and other possible agreements or steps that may aid in the orderly and expeditious disposition of the proceeding.

(c) Prehearing scheduling order—Not later than fourteen days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings, including a plan of discovery and dates for the submission and hearing of motions. The schedule shall provide for the commencement of the evidentiary hearing within six months after entry of the order, unless the Administrative Law Judge determines that a later date is necessary because of the complexity of the case or circumstances beyond the control of the parties. The Administrative Law Judge may modify this order for good cause shown.

(d) Additional prehearing conferences and orders—The Administrative Law Judge may hold additional prehearing conferences or enter additional orders for the purpose of aiding in the orderly and expeditious disposition of a proceeding.

(e) Public access and reporting—Prehearing conferences shall be public unless the Administrative Law Judge determines in his or her discretion that the conference (or any part thereof) shall be closed to the public. The Administrative Law Judge shall have discretion to determine whether a prehearing conference shall be stenographically reported.

FTC Comments

The Commission is . . . amending Rule 3.21. The amended rule contains several new provisions governing prehearing case management and establishes a deadline that will require the evidentiary hearing to begin within six months of the entry of the initial prehearing order. The latter requirement will apply except where the complexity of the case or circumstances beyond the control of the parties require modification. The purpose of these changes is to reduce delay in adjudicative proceedings, to emphasize the role of the ALJ in managing and controlling the progress of litigation, and to encourage counsel to prepare for trial expeditiously. . .

The rule requires that the scheduling order establish a trial date. Unless the complexity of the cases or circumstances beyond the control of the parties necessitate more time, the date must be within six months after the order is entered. Once established, moreover, the date can only be modified for good cause.

The agency's ALJ's strongly supported this proposal. Mr. Halverson, however, vigorously opposed the requirement, and Sullivan & Cromwell commented that the ALJ should be required to set some trial date but that the six-month standard should be omitted.

Mr. Halverson opposed the six-month requirement as unnecessary because the Commission can already act with the expedition needed to protect the public interest; he noted, for example, that Rule 3.42(c) grants the ALJ "all powers necessary" to avoid delay. Mr. Halverson also commented that a six-month requirement is unfair because complaint counsel often will have had extensive pre-complaint investigation, while respondent cannot be expected to begin preparation until a complaint is issued. Furthermore, he noted that Commission cases may raise complex legal and factual issues, may require extensive third-party discovery or time-consuming survey research, or may require the location and preparation of experts and other witnesses. For these reasons, Mr. Halverson concluded, many cases cannot be brought to trial within six months.

Mr. Halverson is of course correct in observing that existing Commission rules require expedition in Part 3 matters. These other rules, however, address the issue of expedition in general terms. The changes to Rule 3.21 establish specific procedures to implement the goal and are therefore meaningful supplements to the existing rules.

The setting of a trial date, moreover, is one significant action that will promote the goal of expedition. As Mr. Halverson notes, the date will have to be set on the basis of incomplete information, and the complexity of a case may not become apparent until after the order is issued. However, the judgment that the ALJ must make in setting a trial date is little different than the judgment that a judge or magistrate must make under Rule 16 of the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 16(b), the judge or magistrate must in most cases issue a order, within 120 days after the filing of a complaint, that limits the time to complete discovery. Like the Federal Rules, moreover, Commission Rule 3.21 addresses situations in which the date proves unrealistic by providing that it can be changed for good cause.

We have also concluded that the six-month standard included in the rule should not prove unfair to respondents. The critical issue is whether the rule allows respondents adequate time to prepare their defense. The proposed rule generally allows eight or more months after the complaint to prepare a case, including a period of more than two months that may precede the scheduling conference. Past experience demonstrates that this is adequate time to prepare many cases. *See, e.g., George's Radio and Television Co., Inc.*, 94 FTC 1135, 1139 (1979) (less than 7 months between complaint and trial); *E.I. Du-Pont de Nemours & Co.*, 96 FTC 653, 655-56 (1980) (less than 8 months); *Litton Industries, Inc.*, 97 FTC 1, 10 (1981) (less than 8 months); *Cliffdale Associates, Inc.* 103 FTC 110, 125 (1983) (less than 7 months).

In the past, most Commission cases have not been brought to trial this rapidly. It is intended, as a result of these changes, that all cases that can be brought to trial within this schedule will be prepared at this pace. In any event, as noted above, the trial date can be set for more than six months after the scheduling order if the complexity of the case or circumstances beyond the control of the parties who requires. In addition, as further noted above, a previously-established trial date can be modified when, for good cause, trial preparation takes longer than anticipated. These provisions adequately protect parties who cannot realistically prepare for trial within six months.

We have concluded, finally, that a rule establishing a six-month deadline is preferable to a rule that simply directs the Administrative Law Judge to set some trial date. The comment filed by Sullivan & Cromwell argues that a six-month standard with an exception for special circumstances will create incentives for a party to seek an extended trial date. These incentives, however, will exist as long as the ALJ is required to set any trial date in the order. The remedy for this problem is not to eliminate the six-month standard, as Sullivan & Cromwell concludes, but to rely on the judge to weigh the arguments that are made and to set a later trial date only when the arguments are persuasive. Sullivan & Cromwell also comments that substantial litigation will result because unrealistic trial dates will generate motions to modify the scheduling order. When a six-month trial date is not realistic, however, the judge can set a later date at the outset. . .

Code: US-X-c-3

Country: US

Type of Regulation: Drug Administration

Name of Agency or Department: USDA/FSIS

Program Title: Inspection Program

Initiation and Termination Dates: data not available

Relevant Legislation: Federal Meat Inspection Act. Poultry Products Inspection Act 21USC P467c82 and 21 USC P671-674.

§ 467. Inspection services

(a) Refusal or withdrawal; hearing; business unfitness based upon certain convictions; persons responsibly connected with the business

The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection upon this chapter because the applicant or recipient or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, within the previous ten years of (1) any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food; or (2) any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health. For the purpose of this paragraph a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity.

(b) Hearing to determine validity of withdrawal or refusal of inspection services: continuation of withdrawal or refusal

Upon the withdrawal of inspection service from any official establishment for failure to destroy condemned poultry products as required under section 455 of this title, or other failure of an official establishment to comply with the requirements as to premises, facilities, or equipment, or the operation thereof, as provided in section 456 of this title, or the refusal of inspection service to any applicant therefor because of failure to comply with any requirements under section 456 of this title, the applicant for, or recipient of, the service shall, upon request, be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Secretary.

(c) Finality and conclusiveness of determination; judicial review; record

The determination and order of the Secretary when made after opportunity for hearing, with respect to withdrawal or refusal of inspection service under this chapter shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the United States Court of Appeals as provided in section 457 of this title. Judicial review of any such order shall be upon the record upon which the determination and order are based. The provisions of section 194 of title 7 shall be applicable to appeals taken under this section.

(Pub. L. 85-172, § 18, Aug. 28, 1957, 71 Stat. 448; Pub. L. 90-492, § 16, Aug. 18, 1968, 82 Stat. 805.)

AMENDMENTS

1968—Par. (a). Pub. L. 90-492 substituted provisions authorizing the Secretary to refuse or withdraw inspection services subsequent to a hearing determining that the applicant or recipient is unfit to engage in any business requiring inspection under this chapter based upon the specified considerations, for provisions granting the Secretary exclusive jurisdiction within the scope of this chapter and exempting poultry and poultry products from the provisions of the Federal Food, Drug, and Cosmetic Act, as amended, to the extent of the application or the extension thereof of the provisions of this chapter.

Par. (b). Pub. L. 90-492 substituted provisions granting a hearing, upon request by the applicant or recipient, to determine the merits and validity of the withdrawal or refusal of inspection services and continuing such withdrawal or refusal in effect, unless otherwise ordered by the Secretary, for provisions authorizing the Secretary to cooperate with other branches of government and with State agencies and to conduct examinations, investigations, and inspections through any officer or employee of a State commissioned by the Secretary for such purpose.

Par. (c). Pub. L. 90-492 added par. (c).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-492 effective Aug. 18, 1968, see section 20 of Pub. L. 90-492, set out as an Effective Date of 1968 Amendment note under section 451 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 454, 467c of this title.

§ 467a. Administrative detention; duration; pending judicial proceedings; notification of government authorities; release; removal of official marks

Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this chapter or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 467b of this title or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the Secretary that the article or poultry is eligible to retain such marks.

(Pub. L. 85-172, § 19, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 805.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 454, 467f of this title.

§ 467b. Seizure and condemnation

(a) Proceedings in rem; libel of information; jurisdiction; disposal by destruction or sale; proceeds into the Treasury; sales restrictions; bonds; court costs and fees, storage, and other expenses against claimants; jury trial; United States as plaintiff

Any poultry product, or any dead, dying, disabled, or diseased poultry, that is being transported in commerce or otherwise subject to this chapter, or is held for sale in the United States after such transportation, and that (1) is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 467c of this title within the jurisdiction of which the article or poultry is found. If the article or poultry is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the article or poultry shall not be sold contrary to the provisions of this chapter, or the laws of the jurisdiction in which it is sold: *Provided*, That upon the execution and delivery of a good and sufficient bond conditioned that the article or poultry shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the jurisdiction in which disposal is made, the court may direct that such article or poultry be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or poultry and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or poultry. The proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(b) Condemnation or seizure under other provisions unaffected

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

(Pub. L. 85-172, § 20, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 806.)

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 454, 467a of this title.

§ 467c. Federal court jurisdiction of enforcement and injunction proceedings and other kinds of cases; limitations; United States as plaintiff; subpenas

The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in section 457(d) or 467 of this title. All proceedings for the enforcement or to restrain violations of this chapter shall be by and in the name of the United States. Subpenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any such proceeding.

(Pub. L. 85-172, § 21, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 806.)

Section Referred to in Other Sections

This section is referred to in sections 454, 467b, 467d of this title.

§ 467d. Administration and enforcement; applicability of penalty provisions; conduct of inquiries; power and jurisdiction of courts

For the efficient administration and enforcement of this chapter, the provision (including penalties) of sections 46, 48, 49 and 50 of title 15 (except paragraphs (c) through (h) of section 46 of title 15 and the last paragraph of section 49 of title 15), and the provisions of section 409(*l*) of title 47, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this chapter and to any person with respect to whom such authority is exercised. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this chapter in any part of the United States, and the powers conferred by said sections 49 and 50 of title 15 on the district courts of the United States may be exercised for the purposes of this chapter by any court designated in section 467c of this title.

(Pub. L. 85-172, § 22, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 807.)

References in Text

The last paragraph of section 49 of title 15, and the provisions of section 409(*l*) of title 47, referred to in text, which related to immunity of witnesses, were repealed by sections 211 and 242 of Pub. L. 91-452, Oct. 15, 1970, title II, 84 Stat. 929, 930, respectively. For provisions relating to immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section Referred to in Other Sections

This section is referred to in section 454 of this title.

§ 467e. Non-Federal jurisdiction of federally regulated matters; prohibition of additional or different requirements for establishments with inspection services and as to marking, labeling, packaging, and ingredients; recordkeeping and related requirements; concurrent jurisdiction over distribution for human food purposes of adulterated or misbranded and imported articles; other matters

Requirements within the scope of this chapter with respect to premises, facilities and operations of any official establishment which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of paragraph (b) of section 460 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements (or storage or handling requirements found by the Secretary to unduly interfere with the free flow of poultry products in commerce) in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any official establishment in accordance with the requirements under this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter exercise concurrent jurisdiction with the Secretary over articles required to be inspected under this chapter for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

(Pub. L. 85-172, § 23, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 807.)

§ 467f. Federal Food, Drug, and Cosmetic Act applications

(a) Exemptions; authorities under food, drug, and cosmetic provisions unaffected

Poultry and poultry products shall be exempt from the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et. seq.] to the extent of the application or extension thereto of the provisions of this chapter, except that the provisions of this chapter shall not derogate from any authority conferred by the Federal Food, Drug, and Cosmetic Act prior to August 18, 1968.

(b) Enforcement proceedings; detainer authority of representatives of Secretary of Health and Human Services

The detainer authority conferred by section 467a of this title shall apply to any authorized representative of the Secretary of Health and Human Services for purposes of the enforcement of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] with respect to any poultry carcass, or part or product thereof, that is outside any official establishment, and for such purposes the first reference to the Secretary in section 467a of this title shall be deemed to refer to the Secretary of Health, Education, and Welfare.

(Pub. L. 85-172, § 24, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 807, and amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

References in Text

The Federal Food, Drug, and Cosmetic Act, referred to in text, is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9

(§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables.

CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in par. (b) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 468. Cost of inspection: overtime

The cost of inspection rendered under the requirements of this chapter, shall be borne by the United States, except that the cost of overtime and holiday work performed in establishments subject to the provisions of this chapter at such rates as the Secretary may determine shall be borne by such establishments. Sums received by the Secretary in reimbursement for sums paid out by him for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section.

(Pub. L. 85-172, § 25, formerly § 19, Aug. 28, 1957, 71 Stat. 448, renumbered Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 805.)

§ 469. Authorization of appropriations

There is authorized to be appropriated such sums as are necessary to carry out the provisions of this chapter.

(Pub. L. 85-172, § 26, formerly § 20, Aug. 28, 1957, 71 Stat. 449, renumbered Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 805.)

§ 470. Reports to Congress

The Secretary shall annually report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate with respect to the slaughter of poultry subject to this chapter, and the preparation, storage, handling, and distribution of poultry parts, poultry products, and inspection of establishments operated in connection therewith, including the operations under and the effectiveness of this chapter.

(Pub. L. 85-172, § 27, as added Pub. L. 90-492, § 17, Aug. 18, 1968, 82 Stat. 807, and amended S. Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Agriculture and Forestry of the Senate was abolished and replaced by the Committee on Agriculture, Nutrition, and Forestry of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 454 of this title.

§ 671. Inspection services: refusal or withdrawal: hearing: business unfitness based upon certain convictions: other provisions for withdrawal of services unaffected: responsible connection with business: finality of Secretary's actions: judicial review: record

The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under subchapter I of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under subchapter I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this chapter for withdrawal of inspection services under subchapter I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the appropriate court as provided in section 674 of this title. Judicial review of any such order shall be upon the record upon which the determination and order are based.

(Mar. 4, 1907, ch. 2907, title IV, § 401, as added Dec. 15, 1967, Pub. L. 90-201, § 16, 81 Stat. 597.)

EFFECTIVE DATE

Subchapter effective Dec. 15, 1967, see section 20 of Pub. L. 90-201, set out as an Effective Date note under section 601 of this title.

§ 672. Administrative detention: duration: pending judicial proceedings: notification of governmental authorities: release

Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to subchapter I or II of this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of subchapter I of this chapter or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 673 of this title or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Secretary that the article or animal is eligible to retain such marks.

(Mar. 4, 1907, ch. 2907, title IV, § 402, as added Dec. 15, 1967, Pub. L. 90-201, § 16, 81 Stat. 598.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 679 of this title.

§ 673. Seizure and condemnation

(a) Proceedings in rem; libel of information; jurisdiction; disposal by destruction or sale; proceeds into the Treasury; sales restrictions; bond; court costs and fees, storage, and other expenses against claimants; proceedings in admiralty; jury trial; United States as plaintiff

Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in commerce or otherwise subject to subchapter I or II of this chapter, or is held for sale in the United States after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 674 of this title within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the article or animal shall not be sold contrary to the provisions of this chapter, or the laws of the jurisdiction in which it is sold: *Provided*, That upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the laws of the jurisdiction in which disposal is made, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(b) Condemnation or seizure under other provisions unaffected

The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

(Mar. 4, 1907, ch. 2907, title IV, § 403, as added Dec. 15, 1967, Pub. L. 90-201, § 16, 81 Stat. 598.)

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 672 of this title.

§ 674. Federal court jurisdiction of enforcement and injunction proceedings and other kinds of cases; limitations of section 607(e) of this title

The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other Territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in section 607(e) of this title.

(Mar. 4, 1907, ch. 2907, title IV, § 404, as added Dec. 15, 1967, Pub. L. 90-201, § 16, 81 Stat. 599.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 671, 673, 677 of this title.

Code: US-X-c-4 (i)

Country: US

Type of Regulation: Food Safety

Name of Agency or Department: Food and Drug Administration

Program Title: Inspection Program - Seizure/injunction

Initiation and Termination Dates: Amendments in effect 180 days after 22 April, 1976

Relevant Legislation:(22 April, 1976) FFDCA 21 USC P 332 - 336 (1982)

§ 332. Injunction proceedings

(a) Jurisdiction of courts

The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 381), to restrain violations of section 331 of this title, except paragraphs (h) to (j) of said section.

(b) Violation of injunction

In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this chapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 22 of such Act of October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 387).

(June 25, 1938, ch. 675, § 302, 52 Stat. 1043; Oct. 10, 1962, Pub. L. 87-781, title I, § 103(d), title II, § 201(c), 76 Stat. 784, 793.)

References in Text

Section 17 of the Act approved October 15, 1914, referred to in subsec. (a), was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948, and is covered by rule 65 of Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure.

Section 22 of such Act of October 15, 1914, referred to in subsec. (b), was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and is covered by section 402 of Title 18, Crimes and Criminal Procedure, and rule 42(b) of the Federal Rules of Criminal Procedure, Title 18, Appendix.

Amendments

1962—Subsec. (a). Pub. L. 87-781 eliminated references to subsecs. (e) and (f) of section 331 of this title.

Effective Date of 1962 Amendment

Section 203 of Pub. L. 87-781 provided that: "The amendments made by this title [amending section 374 of this title, eliminating "(f)" from subsec. (a) of this section, and enacting provisions set out as notes under sections 321, 374 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1962]."

Amendment of subsec. (a) by Pub. L. 87-781, which eliminated "(e),", effective on the first day of the seventh calendar month following Oct. 1962, see section 107 of Pub. L. 87-781, set out as an Effective Date of 1962 Amendment note under section 321 of this title.

Section Referred to in Other Sections

This section is referred to in sections 334, 360j of this title; title 15 section 1456.

§ 333. Penalties

(a) Violation of section 331 of this title

Any person who violates a provision of section 331 of this title shall be imprisoned for not more than one year or fined not more than $1,000, or both.

(b) Second offenses; intent to defraud or mislead

Notwithstanding the provisions of subsection (a) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000, or both.

US-X-C-4(i)

(c) Exceptions in certain cases of good faith, etc.

No person shall be subject to the penalties of subsection (a) of this section, (1) for having received in interstate commerce any article and delivered it or proffered delivery of it, if such delivery or proffer was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary the name and address of the person from whom he purchased or received such article and copies of all documents, if any there be, pertaining to the delivery of the article to him; or (2) for having violated section 331(a) or (d) of this title, if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 331(a) of this title, that such article is not adulterated or misbranded, within the meaning of this chapter designating this chapter or to the effect, in case of an alleged violation of section 331(d) of this title, that such article is not an article which may not, under the provisions of section 344 or 355 of this title, be introduced into interstate commerce; or (3) for having violated section 331(a) of this title, where the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated by the Secretary under this chapter, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that such color additive was from a batch certified in accordance with the applicable regulations promulgated by the Secretary under this chapter; or (4) for having violated section 331(b), (c) or (k) of this title by failure to comply with section 352(f) of this title in respect to an article received in interstate commerce to which neither section 353(a) nor 353(b)(1) of this title is applicable, if the delivery or proffered delivery was made in good faith and the labeling at the time thereof contained the same directions for use and warning statements as were contained in the labeling at the time of such receipt of such article; or (5) for having violated section 331(i)(2) of this title if such person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug, or for having violated section 331(i)(3) of this title if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(d) Exceptions involving misbranded food

No person shall be subject to the penalties of subsection (a) of this section for a violation of section 331 of this title involving misbranded food if the violation exists solely because the food is misbranded under section 343(a)(2) of this title because of its advertising, and no person shall be subject to the penalties of subsection (b) of this section for such a violation unless the violation is committed with the intent to defraud or mislead.

(June 25, 1938, ch. 675, § 303, 52 Stat. 1043; 1940 Reorg. Plan No. IV, § 12, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1237; Oct. 26, 1951, ch. 578, § 2, 65 Stat. 649; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; July 12, 1960, Pub. L. 86-618, title I, § 105(b), 74 Stat. 403; July 15, 1965, Pub. L. 89-74, §§ 7, 9(d), 79 Stat. 233, 235; Oct. 24, 1968, Pub. L. 90-639, § 3, 82 Stat. 1361; Oct. 27, 1970, Pub. L. 91-513, title II, § 701(b), 84 Stat. 1281; Apr. 22, 1976, Pub. L. 94-278, title V, § 502(a)(2)(B), 90 Stat. 411.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-278 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-513 struck out reference to subsec. (b) of this section and transferred to subsec. (b) provisions covering second offenses and offenses committed with intent to defraud or mislead.

Subsec. (b). Pub. L. 91-513 inserted provisions covering second offenses and offenses committed with intent to defraud or mislead formerly set out in subsec. (a) and struck out provisions covering violations involving depressant and stimulant drugs. See section 801 et seq. of this title.

1968—Subsecs. (a), (b). Pub. L. 90-639 made a general revision in the penalties prescribed for offenses involving depressant or stimulant drugs, set a fine of not to exceed $10,000 or imprisonment of not more than 5 years for offenses involving the unlawful manufacturing of, sale, or disposal of, or possession with intent to sell, a depressant or stimulant drug or involving counterfeit depressant or stimulant drugs, stiffened the penalties for unlawful sales or other disposals by persons over 18 to persons under 21, and set new penalties for possession of a depressant or stimulant drug for purposes other than sale or other disposal.

1965—Subsec. (a). Pub. L. 89-74, § 7(a), added the proviso limiting the penalties for depressant or stimulant drug violations to two years imprisonment or $5,000 fine or both for first offense and to two years imprisonment or $15,000 fine or both for subsequent offenses.

Subsec. (b). Pub. L. 89-74, § 7(b), inserted the parenthetical exception provision.

Subsec. (c)(5). Pub. L. 89-74, § 9(d), added cl. (5).

1960—Subsec. (c). Pub. L. 86-618 substituted in cl. (3), "a color additive" for "a coal-tar color", "the color additive" for "the coal-tar color" and "such color additive was" for "such color was".

1951—Subsec. (c)(4). Act Oct. 26, 1951, added cl. (4).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-278 effective 180 days after Apr. 22, 1976, see section 502(c) of Pub. L. 94-278, set out as an Effective Date of 1976 Amendment note under section 334 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-639 applicable only with respect to violations of this chapter committed after Oct. 24, 1968, see section 6 of Pub. L. 90-639, set out as an Effective Date of 1968 Amendments; Transitional Provisions note under section 321 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective Feb. 1, 1966, see section 11 of Pub. L. 89-74, set out as an Effective Date of 1965 Amendment note under section 321 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-618 effective, subject to the provisions of section 203 of Pub. L. 86-618, on July 12, 1960, see section 202 of Pub. L. 86-618, set out as an Effective Date of 1960 Amendment note under section 376 of this title.

US-X-C-4(iii)

EFFECTIVE DATE OF 1951 AMENDMENT

Section 3 of act Oct. 26, 1951, provided that the amendment of this section should take effect six months after Oct. 26, 1951.

(a) Grounds and jurisdiction

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 344 or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found: *Provided, however,* That no libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, and (D) Any adulterated or misbranded device.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 343(a)(2) of this title because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)(I) the food's advertising which resulted in the food being misbranded under section 343(a)(2) of this title was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

(b) Procedure; multiplicity of pending proceedings

The article, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Availability of samples of seized goods prior to trial

The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if

US-X-C-4(iv)

any, of the packages from which the samples analyzed were obtained.

(d) Disposition of goods after decree of condemnation; claims for remission or mitigation of forfeitures

(1) Any food, drug, device, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided,* That after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter, under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. If the article was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the article was imported, and (B) that he had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the article to be delivered to the owner for exportation in lieu of destruction upon a showing by the owner that all of the conditions of section 381(d) of this title can and will be met: *Provided, however,* That the provisions of this sentence shall not apply where condemnation is based upon violation of section 342(a)(1), (2), or (6), section 351(a)(3), section 352(j), or section 361(a) or (d) of this title: *And provided further,* That where such exportation is made to the original foreign supplier, then clauses (1) and (2) of section 381(d) of this title and the foregoing proviso shall not be applicable; and in all cases of exportation the bond shall be conditioned that the article shall not be sold or disposed of until the applicable conditions of section 381(d) of this title have been met. Any article condemned by reason of its being an article which may not, under section 344 or 355 of this title, be introduced into interstate commerce, shall be disposed of by destruction.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a) of this section.

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a) of this section, the condemnation of any equipment or thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (i) that he has not committed or caused to be committed any prohibited act referred to in such paragraph (2) and has no interest in any drug referred to therein, (ii) that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (iii) that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to counterfeit drugs.

(e) Costs

When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

(f) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (a) or (b) of this section—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) Administrative restraint; detention orders

(1) If during an inspection conducted under section 374 of this title of a facility or a vehicle, a device which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the device detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary determines that a period of detention greater than twenty days is required to institute an action under subsection (a) of this section or section 332 of this title, in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of a device during the period of its detention for the purpose of identifying the device as detained. Any person who would be entitled to claim a device if it were seized under subsection (a) of this section may appeal to the Secretary a detention of such device under this paragraph.

Code:UK-E-a-2(i)

Country: UK

Type of Regulation: Environmental

Name of Agency: Department of the Environment; Water Disposal Authority

Program Title: Licencing

Initiation and Termination Dates: 1974-

Relevant Legislation: Control of Pollution Act, 1974 Sections 4, 6, 9, 10.

(4) Where a disposal authority proposes to issue a disposal licence, it shall be the duty of the authority before it does so—

(*a*) to refer the proposal to the water authority and any collection authority of which the area includes any of the relevant land and to any other prescribed person; and

(*b*) to consider any representations about the proposal which, during the period of twenty-one days beginning with that on which the proposal is received by a body or person mentioned in paragraph (*a*) of this subsection or during such longer period as the disposal authority and that body or person agree in writing, the disposal authority receives from that body or person (including in particular any representations about the conditions which that body or person considers should be specified in the licence);

and if a water authority to which the proposal is referred requests the disposal authority not to issue the licence or disagrees with the disposal authority as to the conditions to be specified in the licence either of them may refer the matter to the Secretary of State and the licence shall not be issued except in accordance with his decision.

Provisions supplementary to s. 5.

6.—(1) Provision may be made by regulations as to the conditions which are or are not to be specified in a disposal licence, and as to the conditions specified in a disposal licence which shall be disregarded for the purposes of sections 3(1) and 31(2)(*a*) of this Act.

(2) Subject to regulations made in pursuance of the preceding subsection, a disposal licence may include such conditions as the disposal authority which issues it sees fit to specify in the licence; and without prejudice to the generality of the preceding provisions of this subsection, any such conditions may relate to—

(*a*) the duration of the licence;

(*b*) the supervision by the holder of the licence of activities to which the licence relates;

(*c*) the kinds and quantities of waste which may be dealt with in pursuance of the licence or which may be so dealt with during a specified period, the methods of dealing with them and the recording of information relating to them;

(*d*) the precautions to be taken on any land to which the licence relates;

(*e*) the steps to be taken with a view to facilitating compliance with any conditions of such planning permission

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as is mentioned in subsection (2) of the preceding section;

(*f*) the hours during which waste may be dealt with in pursuance of the licence; and

(*g*) the works to be carried out, in connection with the land, plant or equipment to which the licence relates, before the activities authorised by the licence are begun or while they are continuing;

and it is hereby declared that a condition may require the carrying out of works or the doing of any other thing which the authority considers appropriate in connection with the licence notwithstanding that the licence holder is not entitled as of right to carry out the works or do the thing.

(3) The holder of a disposal licence who without reasonable excuse contravenes a condition of the licence which in pursuance of regulations made by virtue of subsection (1) of this section is to be disregarded for the purposes mentioned in that subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400; but no proceedings for such an offence shall be brought in England and Wales except by or with the consent of the Director of Public Prosecutions or by the disposal authority which issued the licence.

(4) It shall be the duty of each disposal authority—

(*a*) to maintain a register containing prescribed particulars of all disposal licences issued by the authority which are for the time being in force; and

(*b*) to secure that the register is open to inspection at its principal office by members of the public free of charge at all reasonable hours; and

(*c*) to afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register.

Supervision of licensed activities.

9.—(1) While a disposal licence is in force it shall be the duty of the authority which issued the licence to take the steps needed—

(*a*) for the purpose of ensuring that the activities to which the licence relates do not cause pollution of water or danger to public health or become seriously detrimental to the amenities of the locality affected by the activities; and

(*b*) for the purpose of ensuring that the conditions specified in the licence are complied with.

(2) For the purpose of performing the duty which is imposed on a disposal authority by the preceding subsection in connection with a licence, any officer of the authority authorised in writing in that behalf by the authority may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work on the relevant land and on any plant or equipment to which the licence relates.

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(4) Where it appears to a disposal authority that a condition specified in a disposal licence issued by the authority is not being complied with, then, without prejudice to any proceedings in pursuance of section 3 or 6(3) of this Act in consequence of any failure to comply with the condition, the authority may—

(*a*) serve on the licence holder a notice requiring him to comply with the condition before a time specified in the notice; and

(*b*) if in the opinion of the authority the licence holder has not complied with the condition by that time, serve on him a further notice revoking the licence at a time specified in the further notice.

Appeals to Secretary of State from decisions wi respect to licences.

10.—(1) Where—

(*a*) an application for a disposal licence or a modification of a disposal licence is rejected; or

(*b*) a disposal licence which specifies conditions is issued; or

(*c*) the conditions specified in a disposal licence are modified; or

(*d*) a disposal licence is revoked,

the applicant for the licence or, as the case may be, the holder or last holder of it may, in accordance with regulations, appeal from the decision in question to the Secretary of State; and where on such an appeal the Secretary of State determines that the decision is to be altered it shall be the duty of the disposal authority concerned to give effect to the determination.

(2) While an appeal in pursuance of the preceding subsection is pending in a case falling within paragraph (*c*) or (*d*) of that subsection, the decision in question shall, subject to the following subsection, be ineffective; and if the appeal is dismissed or withdrawn the decision shall be effective again from the end of the day on which the appeal is dismissed or withdrawn.

Code:UK-E-a-5(i)

Country: UK

Type of Regulation: Environment

Name of Agency: Secretary of State for the Environment. Harbour Authorities

Program Title: NA

Initiation and Termination Dates: March 1, 1973 -

Relevant Legislation: Prevention of Oil Pollution Act, 1971, Section 7 & 8

Increase of maximum fine for certain offences.

7. The limit of the fine that may be imposed on summary conviction in respect of offences committed after the coming into force of this section under section 1 or section 3 of the Oil in Navigable Waters Act 1955 or section 5 of the Continental Shelf Act 1964, shall, instead of the sum of one thousand pounds specified in section 6 of the Oil in Navigable Waters Act 1955 and section 5(2) of the Continental Shelf Act 1964 be the sum of fifty thousand pounds.

Shipping casualties.

8.—(1) The powers conferred by this section shall be exercisable where—

(*a*) an accident has occurred to or in a ship, and

(*b*) in the opinion of the Secretary of State oil from the ship will or may cause pollution on a large scale in the United Kingdom or in the waters in or adjacent to the United Kingdom up to the seaward limits of territorial waters, and

(*c*) in the opinion of the Secretary of State the use of the powers conferred by this section is urgently needed.

(2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Secretary of State may give directions as respects the ship or its cargo—

(*a*) to the owner of the ship, or to any person in possession of the ship, or

(*b*) to the master of the ship, or

(*c*) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation.

(3) Directions under subsection (2) above may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require—

(*a*) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality, or

(*b*) that the ship is not to be moved to a specified place or area, or over a specified route, or

(*c*) that any oil or other cargo is to be, or is not to be, unloaded or discharged, or

(*d*) that specified salvage measures are to be, or are not to be, taken.

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(4) If in the opinion of the Secretary of State the powers conferred by subsection (2) above are, or have proved to be, inadequate for the purpose, the Secretary of State may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Secretary of State may—

(*a*) take any such action as he has power to require to be taken by a direction under this section,

(*b*) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions,

(*c*) undertake operations which involve the taking over of control of the ship.

Country: UK **Code:**UK-E-a-6(i)

Type of Regulation: Environment/Water Pollution

Name of Agency: Secretary of State for the Environment. Regional Water Authorities

Program Title: Charges/Special Taxation

Initiation and Termination Dates: 1974-

Relevant Legislation: Control of Pollution Act, 1974, Section 52

Charges in respect of certain discharges in England and Wales.

1973 c. 37.

1937 c. 40.

52.—(1) The Secretary of State may, by an order made after consultation with the National Water Council, provide that sections 30 and 31 of the Water Act 1973 (which among other things relate to charges for facilities provided by water authorities and to schemes for the payment of the charges) shall apply to discharges of trade or sewage effluent which are made or authorised to be made by virtue of a consent given in pursuance of this Act or the Public Health (Drainage of Trade Premises) Act 1937 as those sections apply to facilities provided by water authorities; and any such order may—

(*a*) provide that, in the said section 30 as applied by the order, subsection (4) (under which regard is to be had to the cost of providing facilities in fixing charges for the facilities) and references to that subsection shall be omitted; and

1961 c. 64.

(*b*) repeal sections 59(1)(*e*) and 61(4) of the Public Health Act 1961 (which provide for conditions relating to charges to be attached to consents for discharges which are given in pursuance of the said Act of 1937).

(2) An order made in pursuance of the preceding subsection—

(*a*) shall include provision for appeals to the Secretary of State in respect of charges payable to a water authority by virtue of that subsection; and

(*b*) may include provision for the giving by the Secretary of State in consequence of an appeal of directions in respect of the charges to the authority or any other party to the appeal (including directions as to the charges which are to be payable in respect of any period before the determination of the appeal);

and the Secretary of State may by order vary or revoke any provisions which by virtue of this subsection or section 104(1)(*a*) of this Act are contained in an order made in pursuance of this section.

Code:UK-E-a-7 (i)

Country: UK

Type of Regulation: Prohibition/Permit

Name of Agency: Secretary of State for the Environment. Local Inspectorates

Program Title: Smoke Control Orders

Initiation and Termination Dates: 1968-

Relevant Legislation: Clean Air Act, 1968, Section 13, 5, 6, 8-10, 11

Dark smoke

Prohibition of dark smoke from industrial or trade premises.

1.—(1) Subject to the following provisions of this section, dark smoke shall not be emitted from any industrial or trade premises and if, on any day, dark smoke is so emitted the occupier of the premises shall be liable on summary conviction to a fine not exceeding £100.

(2) Subsection (1) above shall not apply to the emission of dark smoke from a chimney of a building or from any other chimney to which section 1 of the principal Act (prohibition of dark smoke from chimneys) applies.

(3) The Minister may by regulations exempt from subsection (1) above, subject to compliance with such conditions if any as may be prescribed, the emission of dark smoke caused by the burning of any prescribed matter.

Emission of grit and dust from furnaces.

2.—(1) The Minister may by regulations prescribe limits on the rates of emission of grit and dust from the chimneys of furnaces to which this section applies, and different limits may be prescribed under this subsection for different cases and according to different circumstances.

(2) If on any day grit or dust is emitted from a chimney serving a furnace to which this section applies at a rate exceeding the relevant limit prescribed under subsection (1) above, the occupier of any building in which the furnace is situated shall be liable on summary conviction to a fine not exceeding £100.

(3) In proceedings for an offence under subsection (2) above it shall be a defence to prove that the best practicable means had been used for minimising the alleged emission.

Acquisition and sale of unauthorised fuel in a smoke control area.

9.—(1) Any person who—

(*a*) acquires any solid fuel, other than an authorised fuel, for use in a building in a smoke control area otherwise than in a building or fireplace exempted from the operation of section 11 of the principal Act; or

(*b*) acquires any solid fuel, other than an authorised fuel, for use in a boiler or plant to which this paragraph applies in a smoke control area, not being a boiler or plant so exempted; or

(*c*) sells by retail any solid fuel, other than an authorised fuel, for delivery by him or on his behalf to a building in a smoke control area or to premises in such an area in which there is a boiler or plant to which paragraph (*b*) above applies;

shall be liable on summary conviction to a fine not exceeding £20.

UK-E-a-7(ii)

Miscellaneous amendments of procedure for making orders with respect to smoke control areas.

10.—(1) Notwithstanding anything in paragraph 6 of Schedule 1 to the principal Act (local authority orders under section 11 of that Act to come into operation not earlier than six months from confirmation thereof) an order made by a local authority under the said section 11 varying a previous order under that section so as to exempt specified buildings or classes of building or specified fireplaces or classes of fireplace from the operation of that section may come into operation on, or at any time after, the date of its confirmation.

(2) A local authority shall not without the consent of the appropriate Minister exercise their power under the proviso to the said paragraph 6 of postponing the coming into operation of an order under the said section 11 for a period of more than twelve months or for periods amounting in all to more than twelve months.

Code: UK-E-a-10(i)

Country: UK

Type of Regulation: General Rule Making

Name of Agency: Regional Water Authorities

Program Title: Standard Setting/Emission Limits/Consents

Initiation and Termination Dates: 1974 -

Relevant Legislation: The Water Act 1973; Control of Pollution Act, Part II, Section 34

PART II

Consents for discharges

Consents for discharges of trade and sewage effluent etc.

34.—(1) An application to a water authority for consent in pursuance of this section for discharges of any effluent or other matter shall state—

(*a*) the place at which it is proposed to make the discharges to which the application relates;

(*b*) the nature and composition of the matter proposed to be discharged and the maximum temperature of it at the time when it is proposed to be discharged;

(*c*) the maximum quantity of the matter which it is proposed to discharge on any one day and the highest rate at which it is proposed to discharge it;

and a water authority may if it thinks fit treat an application for consent for discharges at two or more places as separate applications for consent for discharges at each of those places.

(2) Subject to the following section, it shall be the duty of a water authority to which an application for consent is made in pursuance of this section—

(*a*) to give the consent either unconditionally or subject to conditions or to refuse it; and

(*b*) not to withhold the consent unreasonably;

and if within the period of three months beginning with the date when an application for consent is received by a water authority, or within such longer period as may at any time be agreed upon in writing between the authority and the applicant, the authority has neither given nor refused the consent nor informed the applicant that the application has been transmitted to the Secretary of State in pursuance of the following section, the authority shall be deemed to have refused the consent.

(3) If it appears to a water authority that a person has, without the authority's consent, caused or permitted matter to be discharged in its area in contravention of section 32(1) of this Act and that a similar contravention by that person is likely, the authority may if it thinks fit serve on him an instrument in writing giving its consent, subject to conditions specified in the instrument, for discharges of a kind so specified; but consent given in pursuance of this subsection shall not relate to any discharge which occurred before the instrument giving the consent was served on the recipient of the instrument.

(4) The conditions subject to which a water authority may give its consent in pursuance of this section shall be such reasonable conditions as the authority thinks fit; and without prejudice to

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the generality of the preceding provisions of this subsection those conditions may include reasonable conditions—

(*a*) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;

(*b*) as to the nature, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;

(*c*) as to the provision of facilities for taking samples of the matter discharged and in particular as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

(*d*) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;

(*e*) as to the keeping of records of the nature, composition, temperature, volume and rate of the discharges and in particular of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent;

(*f*) as to the making of returns and the giving of other information to the water authority about the nature, composition, temperature, volume and rate of the discharges; and

(*g*) as to the steps to be taken for preventing the discharges from coming into contact with any specified underground water;

and it is hereby declared that consent may be given in pursuance of this section subject to different conditions in respect of different periods.

(5) A person who, in an application for consent in pursuance of this section, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

Code:UK-O-a-2(i)

Country: UK

Type of Regulation: Health and Safety

Name of Agency: Health and Safety Executive--Inspectorates

Program Title: Best Practical Means--Guidelines

Initiation and Termination Dates: 1975 -

Relevant Legislation: Health and Safety at Work etc. Act, 1974; Section 5(1)-(2)

General duty of persons in control of certain premises in relation to harmful emissions into atmosphere.

5.—(1) It shall be the duty of the person having control of any premises of a class prescribed for the purposes of section 1(1)(*d*) to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances and for rendering harmless and inoffensive such substances as may be so emitted.

(2) The reference in subsection (1) above to the means to be used for the purposes there mentioned includes a reference to the manner in which the plant provided for those purposes is used and to the supervision of any operation involving the emission of the substances to which that subsection applies.

(3) Any substance or a substance of any description prescribed for the purposes of subsection (1) above as noxious or offensive shall be a noxious or, as the case may be, an offensive substance for those purposes whether or not it would be so apart from this subsection.

(4) Any reference in this section to a person having control of any premises is a reference to a person having control of the premises in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not) and any duty imposed on any such person by this section shall extend only to matters within his control.

[illegible]

6.—(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work—

(*a*) to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used ;

Code: UK-O-a-~~4~~3(i)

Country: UK

Type of Regulation: Health and Safety

Name of Agency: Health and Safety Executive-Inspectorates

Program Title: Self-Regulation--Safety Committees

Initiation and Termination Dates: 1975 -

Relevant Legislation: Health and Safety Work Act, 1974: Section 2(4)-(7); Section 5(1)

2-(4) Regulations made by the Secretary of State may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.

(5) Regulations made by the Secretary of State may provide for the election in prescribed cases by employees of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and may have such other functions as may be prescribed.

(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in subsections (4) and (5) above, to establish, in accordance with regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

5.—(1) It shall be the duty of the person having control of any premises of a class prescribed for the purposes of section 1(1)(*d*) to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances and for rendering harmless and inoffensive such substances as may be so emitted.

General duty of persons in control of certain premises in relation to harmful emissions int atmosphere.

CODE: AU-E-a-1 (i)

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: various state agencies

Program Title: NA

Initiation and Termination Dates: 1970 -

Relevant Legislation: Environmental Protection Act, 1970

PART II.—ENVIRONMENT PROTECTION BODIES.

Bodies to be appointed.

5. For the purposes of this Act there shall be—

(*a*) an Environment Protection Authority;

(*b*) an Environment Protection Council; and

(*c*) an Environment Protection Appeal Board.

Environment Protection Authority.

6. (1) The Environment Protection Authority shall consist three members appointed by the Governor in Council of who

(*a*) two shall be expert in and hold appropriate qualificati in environmental control; and

(*b*) one shall be a person of suitable administrative and experience.

Chairman.

(2) The Governor in Council shall appoint one of such mem to be chairman of the Authority and one other member to deputy chairman.

Environment Protection Council.

7. (1) The Environment Protection Council shall consist seventeen members appointed by the Governor in Council whom—

(*a*) one shall be appointed on the nomination of the Mi from a panel of five names representin

skilled in the field of industrial waste problems submitted by the Victorian Chamber of Manufacturers;

(*b*) one shall be appointed on the nomination of the Minister from a panel of five names submitted by the Victorian Trades Hall Council;

(*c*) one shall be appointed on the nomination of the Minister of Water Supply from among the Commissioners of the State Rivers and Water Supply Commission;

(*d*) one shall be the Engineer in Chief of the Melbourne and Metropolitan Board of Works;

(*e*) one shall be the Chief Health Officer;

(*f*) one shall be the Director of Fisheries and Wildlife;

(*g*) one shall be a municipal councillor appointed on the nomination of the Minister for Local Government from a panel of the names of five municipal councillors submitted by the Municipal Association of Victoria;

(*h*) one shall be appointed on the nomination of the Minister as representing the general public;

(*i*) one shall be appointed on the nomination of the Minister for Fuel and Power from among the officers of the State Electricity Commission;

(*j*) one shall be the chairman of the Soil Conservation Authority;

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(*k*) one shall be appointed on the nominaton of the Minister for Fuel and Power from among the officers of the Gas and Fuel Corporation ;

(*l*) one shall be appointed on the nomination of the Minister of Mines as a person with appropriate qualifications in environmental management ;

(*m*) one shall be an engineer of the Ports and Harbors Division of the Public Works Department nominated by the Minister of Public Works ;

(*n*) one shall be appointed by the Minister on the nomination of the Commonwealth Scientific and Industrial Research Organization as a qualified industrial waste chemist or industrial waste engineer residing in Victoria ;

(*o*) one shall be appointed on the nomination of the Minister of Agriculture ;

(*p*) one shall be appointed on the nomination of the Minister for Local Government [illegible]

(*q*) one shall be appointed on the nomination of the Minister for Conservation as a professor or teach of ecology or aquatic or marine biology at a univer in Victoria.

Chairman of Council.

(2) The Governor in Council shall appoint one of such memb to be the chairman of the Council and one other member to deputy chairman.

Minister may appoint in default of panel.

(3) If any body authorized to nominate a person or to sub a panel of names to the Minister fails for one month to comp with a request in writing by the Minister to nominate a per or to submit a panel of names to the Minister the Governor Council may appoint a suitable person nominated by the Mini without nomination or the submission of a panel of names.

Environment Protection Appeal Board.

8. (1) The Environment Protection Appeal Board shall cons of three members appointed by the Governor in Council on nomination of the Minister of whom—

(*a*) one shall be a barrister and solicitor ; and

(*b*) two shall be persons experienced in environme control or management.

(2) The Governor in Council shall appoint one of such pers to be chairman of the Board.

Provisions applicable to all bodies.

9. The provisions of this section shall have effect with resp to the Authority and with respect to the Council and the Boa namely :—

(*a*) Subject to this Act each appointed member—

(i) shall be eligible for re-appointment ; and

(ii) may at any time be removed by the Govern in Council ;

(*b*) The Governor in Council may fill any vacancy in office of member ;

(*c*) Subject to the presence of a quorum the body continue to act notwithstanding any vacancy in membership ;

(*d*) Members shall be paid such remuneration and allow as are prescribed ;

(*e*) The seat of a member shall become vacant if the memb

(i) is absent without leave of the Minister four consecutive meetings of the body which he is a member ;

(ii) by writing under his hand addressed to Governor in Council he resigns his off member ;

(iii) is an undischarged bankrupt or person wh property is subject to an order or arrang under the laws relating to bankruptcy ;

(iv) is attainted of treason or convicted of an indictable offence or is a person of unsound mind ;

(*f*) Subject to this Act the body may regulate its own procedure.

Provisions applicable to Authority only.

10. The provisions of this section shall have effect only with respect to the Authority, namely : —

(*a*) Subject to this Act each member shall be entitled to hold office for not more than five years from the date of his appointment ;

(*b*) The seat of a member shall become vacant when he attains the age of sixty-five years ;

(*c*) A member of the Authority shall not, except in special circumstances and with the consent in writing of the Minister, during his continuance in office directly or indirectly engage in any paid employment outside the duties of his office ;

(*d*) A member of the Authority shall not in respect of his office as such be subject to the provisions of the *Public Service Act* 1958 ;

(*e*) Any member who was immediately prior to his appointment an officer of the public service or, having formerly been an officer of the public service, is engaged or employed in any office or capacity in which he was eligible on the recommendation of the Public Service Board to be re-appointed upon the termination of such engagement or employment to some office in the public service he shall—

(i) be eligible on the recommendation of the Public Service Board to be re-appointed at the termination of his appointment to some office in the public service with a classification and emolument corresponding with or higher than that which he held in the public service immediately prior to his appointment as if his service in such appointment or appointments had been service with the public service and be classified accordingly ; and

(ii) for the purposes of section 63 of the *Public Service Act* 1958 be deemed to continue to be a member of the public service for the period of his appointment ;

(*f*) If a member was immediately prior to his appointment an officer within the meaning of the *Superannuation Act* 1958 or any corresponding previous enactment he shall notwithstanding his appointment be deemed to continue subject to that Act to be an officer within the meaning of that Act ;

(*g*) At any meeting of the Authority the chairman or in his absence the deputy chairman shall preside ;

(*h*) Two members shall be a quorum of the Authority ;

(*i*) Meetings of the Authority shall be held at such times and places as the Authority determines ;

(*j*) The decision of the majority of the members of the Authority upon any matter shall be the decision of the Authority but in the case of an equality of votes on any matter at any meeting of the Authority at which two members only are present the chairman, or in his absence the deputy chairman, shall have a second or casting vote ; and

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(*k*) A member of the Authority shall not during his term of office have any financial interest in or be a shareholder of any company business or undertaking licensed or required to be licensed under this Act.

Provisions applicable to Council only.

11. The provisions of this section shall have effect only with respect to the Council, namely :—

(*a*) Subject to this Act each appointed member shall be entitled to hold office for not more than three years from the date of his appointment ;

(*b*) The seat of a person who is a member by virtue of holding any office referred to in section 7 shall become vacant if he ceases to hold the office he held when he became a member ;

(*c*) The chairman or in his absence the deputy chairman shall preside at all meetings of the Council ;

(*d*) If at the time appointed for the commencement of any meeting of the Council neither the chairman nor the deputy chairman is present the members present shall elect one of their number to preside at the meeting ;

(*e*) In the event of a member being unable for any reason to attend a meeting of the Council the Minister may nominate a person to attend in his stead ;

(*f*) Nine members shall be a quorum of the Council;

(*g*) The decision upon any matter of the majority of the members of the Council present at any meeting shall be the decision of the Council ;

(*h*) The Council shall meet at least four times in each year at such times and places as are fixed by the chairman and such additional times and places as are fixed by the Authority ;

(*i*) The seat of a member becomes vacant when he attains the age of sixty-five years.

Provisions applicable to Board only.

12. The provisions of this section shall have effect only with respect to the Board, namely :—

(*a*) Subject to this Act each member shall be entitled to hold office for not more than three years from the date of his appointment ;

(*b*) The chairman and one other member of the Board shall be a quorum of the Board ;

(*c*) The decision of the majority of the members of the Board on any matter shall be the decision of the Board but in the case of an equality of votes on any matter at any meeting of the Board at which two members only are present the chairman shall have a second or casting vote ;

(*d*) In the case of the illness or absence of the chairman or other member of the Board the Minister may appoint an eligible person to act in his stead during his illness or absence and that person shall while so acting have all the powers and perform all the duties of the chairman or member in whose stead he is appointed to act;

(*e*) A member of the Board shall not during his term of office have any financial interest in or be a shareholder of any company business or undertaking licensed or required to be licensed under this Act.

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Powers duties and functions of the Authority.

13. (1) The powers duties and functions of the Authority shall be ;—

(*a*) To administer this Act and any regulations and Orders made thereunder ;

(*b*) To be responsible for and to co-ordinate all activities relating to the discharge of wastes into the environment and for preventing or controlling pollution and protecting and improving the quality of the environment ;

(*c*) To recommend to the Governor in Council State environment protection policy and classifications for the protection of any portion or portions of the environment or any segment or segments of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment, long range development uses and planning and any other factors relating to the protection of the environment ;

(*d*) By the issue of licences to control the volume types, constituents and effects of waste discharges, emissions, deposits, or other sources of pollutants and of substances which are of danger or a potential danger to the quality of the environment or any segment of the environment ;

(*e*) To undertake surveys and investigations as to the causes, nature, extent, and prevention of pollution and to assist and co-operate with other persons or bodies carrying out similar surveys or investigations ;

(*f*) To conduct promote and co-ordinate research in relation to any aspect of pollution or the prevention thereof and to develop criteria for the protection and improvement of the environment ;

(*g*) To specify standards and criteria for the protection of beneficial uses and the maintenance of the quality of the environment having regard to the ability of the environment to absorb waste without detriment to its quality and other characteristics ;

(*h*) To co-opt any persons or bodies to form panels of experts the Authority or the Minister considers capable of assisting the Authority in relation to special problems ;

(*i*) To publish reports and information with respect to all aspects of environment protection ;

(*j*) To specify methods to be adopted in taking samples and making tests for the purposes of this Act ;

(*k*) To undertake investigations and inspections to ensure compliance with this Act and to investigate complaints relating to breaches of this Act ;

(*l*) To provide information and education to the public regarding the protection and improvement of the environment ;

(*m*) To establish and maintain liaison and co-operation with other States and the Commonwealth with respect to environment protection, pollution control, and waste management ;

(*n*) Where necessary to require the submission of plans relating to any existing or proposed waste discharger or any proposed system, device, or equipment for handling, treating, or disposing of wastes ;

(*o*) To report to the Minister upon matters concerning the protection of the environment and upon any amendments it thinks desirable in the law relating to pollution and upon any matters referred to it by the Minister ; and

(*p*) To promote, encourage, co-ordinate, and carry out long-range planning in environment management, waste management and pollution control.

(2) Before the end of September in each year the Authority shall make to the Minister a report of the proceedings of the Authority and the Council during the previous financial year and the Minister shall cause the report to be laid before both Houses of Parliament within fourteen days after its receipt or, if Parliament is not then sitting, within fourteen days after the next meeting of Parliament.

Functions of Council.

(3) The functions of the Council shall be—

(*a*) generally to advise the Authority on matters pertaining to its responsibilities, powers, duties, and functions ;

(*b*) to advise the Authority upon any matter referred to the Council by the Authority.

Functions of Board.

(4) The functions of the Board shall be to hear and determine all appeals under this Act from the decisions of the Authority or any protection agency with respect to licensing the discharges, emissions, or deposits of wastes.

Officers.

14. (1) Subject to the *Public Service Act* 1958 there shall be appointed to the Authority such officers as are necessary to carry out the functions of the Authority.

(2) With the consent of the Minister concerned the Authority may make use of the services of any officer or employé in the public service within the meaning of the *Public Service Act* 1958 and may enter into any agreement with any person or body whereby the services of that person or body or any officer or servant thereof may be in part made use of by the Authority.

(3) For

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(3) For the purpose of carrying this Act into effect the Authority may confer upon any person referred to in sub-section (2) any of the powers of authorized officers under this Act or impose upon him any duties under this Act.

Expenses of Authority &c.

15. The remuneration and expenses of the members and all expenses lawfully incurred by the Authority, the Council and the Board under this Act shall be defrayed out of moneys provided by Parliament for the purpose.

PART III.—ENVIRONMENT PROTECTION.

Declaration of Policy.

State Environment Protection Policy.

16. (1) For the purposes of this Act the Governor in Council may, on the recommendation of the Authority, by Order published in the *Government Gazette* declare the environment protection policy (hereafter in this Act called " State environment protection policy ") to be observed with respect to the environment generally or in any portion or portions of Victoria or with respect to any element or elements or segment or segments of the environment.

(2) Any Order made by the Governor in Council under sub-section (1) may by Order of the Governor in Council published in the *Government Gazette* be revoked or varied.

Orders may make provisions for certain matters.

17. (1) In and by any Order made under section 16 the Governor in Council may, for securing the observance of State environment protection policy declared by the Order—

(*a*) classify any area or any segment or element of the environment in any area for the purposes of the Order ;

(*b*) set aside any area or areas or any segment or segments of the environment within which the discharge, emission, or deposit of wastes is prohibited or restricted as specified in the Order ;

(*c*) make rules to be observed for carrying any such prohibition or restriction into effect ; and

(*d*) delegate to any protection agency such of the powers of the Authority as are necessary for securing the observance of the Order.

(2) Any person who contravenes or fails to comply with any rules made by any such Order shall be guilty of an offence.

Penalty : $500.

Content of Orders.

18. State environment protection policy declared in any Order under section 16 shall establish the basis for maintaining environmental quality sufficient to protect existing and anticipated

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beneficial uses in the area affected by the Order and in particular shall include in terms sufficiently clear to give an adequate basis for planning and licensing functions—

(*a*) the boundaries of any area affected ;

(*b*) identification of the beneficial uses to be protected ;

(*c*) selection of the environmental indicators to be employed to measure and define the environmental quality ;

(*d*) a statement of the environmental quality objectives (where practicable) ; and

(*e*) the programme (if any) by which the stated environmental quality objectives are to be attained and maintained.

Notice of intention.

19. (1) Before State environment protection policy for an area is declared or an area or any segment of the environment in an area is classified for the purposes of this Act the Authority shall cause to be published in three issues of a newspaper or newspapers over a period of not less than twenty-one days notice of intention to declare State environment protection policy in respect of the area or to classify the area or segment pursuant to the provisions of this Act and such newspaper or newspapers shall be a newspaper or newspapers circulating in such districts as the Authority considers appropriate having regard to the situation of the area or segment concerned.

(2) Any person likely to be affected by the proposal shall be entitled to submit to the Authority any information which he considers relevant to the protection or classification of the area or segment.

(3) After considering all information submitted the Authority may, not less than two months after publication of the last notice inserted pursuant to the provisions of sub-section (1) recommend to the Governor in Council the State environment protection policy to be pursued in the area or the classification or re-classification of the area or segment.

(4) The Governor in Council may, on the recommendation of the Authority under sub-section (3) classify or re-classify an area or any segment of the environment in an area by reference to any prescribed classification.

Control of Wastes.

Licensing of discharge &c. of wastes.

20. (1) After the commencement of this section no person shall begin discharging, emitting, or depositing wastes into the environment without being licensed under this Act.

(2) Any person who at the commencement of this section is discharging, emitting, or depositing wastes into the environment, whether licensed or permitted so to do under any other Act or not, may continue subject to compliance with policies, classifications and standards determined under this Act to discharge, emit, or deposit wastes into the environment but within three months after the said commencement shall make application for a licence under this Act.

(3) Any person seeking to be licensed under this Act may make application in writing to the Authority or to any protection agency designated by the Authority for the purpose and shall lodge with his application such plans, specifications, descriptions of waste constituents and characteristics and other information as the Authority or protection agency requires.

(4) On receiving any such application the Authority or protection agency shall refer a copy of the application together with a copy or summary of the accompanying information plans and documents to any protection agency or any person or body which in the opinion of the Authority or the receiving agency may be affected by or should consider the application.

(5) (*a*) If within one month after receiving a copy of any such application any person or body to whom an application is referred submits to the Authority or protection agency a report (including any objections or recommendations which it thinks proper to make on the application) the Authority shall consider such report.

(*b*) In the event of the Commission of Public Health lodging an objection with the Authority or protection agency on the ground that in the opinion of the Commission the public health is likely to be endangered if a licence is granted the Authority or protection agency shall not issue the licence.

Grant or refusal of licence.

(6) In the absence of any such objection and as all relevant reports have been submitted or after the expiration of one month (whichever is the earlier) and after considering any such reports the Authority or protection agency may—

(*a*) grant the licence sought with or without modification or subject to such conditions limitations and restrictions as it thinks fit including a condition requiring the licensee to provide and bear the cost of monitoring equipment and a satisfactory monitoring programme; or

(*b*) refuse to grant the licence.

Authority may allow time to comply with licence.

(7) The Authority may allow any person who at the commencement of this section is discharging, emitting, or depositing wastes into the environment a reasonable time within which to comply with the conditions, limitations, and restrictions to which his licence under this Act is subject and may, upon sufficient cause being shown by any licensee, extend the time so allowed.

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Authority to have regard to declared policy, classification &c.

(8) In considering an application for the issue of a licence under this Act the Authority or protection agency shall have regard to the effect of the discharge emission or deposit of the wastes concerned in relation to State environment protection policy and any classification made under this Act so that the licence and any conditions to which it is subject are consistent with such policy or classification.

(9) The Authority or a protection agency may refuse to grant a licence or any renewal variation transfer or other application relating to a licence where it considers that the proposed discharge, emission, or deposit would by way of location, volume, or constituency be contrary to State environment protection policy or not consistent therewith or any classification which is applicable in the circumstances or would create a condition of pollution.

Cessation of discharge on refusal of application for licence.

(10) Where any person who is discharging, emitting, or depositing wastes into the environment at the commencement of this section makes application for the issue to him of a licence under this Act and the application is refused the applicant shall cease to discharge, emit, or deposit such wastes into the environment within such time (not exceeding six months) as is specified in the notice of refusal of his application and after the expiration of that time he shall be deemed to be unlicensed.

Exemption from licensing provisions.

(11) The Governor in Council may, on the recommendation of the Authority, by Order exempt any persons or class of persons, any premises or class of premises, or any category, type, volume, or kind of waste from all or any of the provisions of this Part with respect to the holding of licences subject to such conditions as are specified in the Order but subject always to compliance with any policies, classifications, or standards applicable to the area affected or the waste concerned.

Revocation &c. of licence.

(12) During the currency of a licence the Authority may by notice in writing served on the holder of the licence—

(*a*) revoke or suspend the licence for any breach of this Act or of the conditions, limitations, or restrictions to which the licence is subject ;

(*b*) revoke or vary any condition, limitation, or restriction to which the licence is subject ; or

(*c*) attach new conditions, limitations, or restrictions to the licence.

Monitoring.

21. (1) A licence under this Act may be subject to a condition that the licensee shall at his own expense conduct a monitoring programme designed to provide the Authority or a protection agency with information concerning the characteristics, volume, and effects of the discharge, emission, or deposit in respect of which the licence is issued and the characteristics of the receiving environment.

AV-E-a-1 (viii)

(2) All data and information recorded by such programme shall be supplied to the Authority or the supervising protection agency at such times and in such forms as are specified in the licence.

Further information.

22. The Authority may, by notice in writing served on an applicant, require the applicant to furnish to the Authority within the time specified in the notice (being not less than fourteen days) such information and such plans and specifications as the Authority considers necessary and relevant to the application and specifies in the notice.

Registers of licences.

23. The Authority shall cause to be kept such registers of licences as are prescribed.

Fees.

24. (1) The fee payable on the issue of a licence under this Part and annually thereafter shall be the fee prescribed with respect to each point of discharge for wastes but shall not exceed $5,000.

(2) A point of discharge may consist of more than one outlet for the same waste matter but the decision of the Authority or protection agency on any question whether a number of outlets constitutes one or more than one point of discharge shall be final.

(3) Different fees for licences or approvals may be prescribed according to specified factors.

(4) The fee payable in respect of the transfer of a licence shall be such fee not exceeding $200 as is prescribed.

Transfer of licence.

25. (1) An application for the transfer of a licence shall be made to the Authority or a protection agency in writing and shall be accompanied by the prescribed fee.

(2) The Authority or protection agency may grant an application for the transfer of a licence subject to any conditions it thinks fit or may refuse the application.

Duration of licence.

26. (1) Subject to the payment of the annual fee prescribed a licence under this Act shall remain in force until revoked or suspended under this Act.

(2) The holder of a licence under this Act shall not re-establish or materially extend or alter the volume, constituency, or location of any waste discharge without first making application for and obtaining the approval of the Authority thereto and for any necessary variation of his licence.

Unlicensed discharge.

27. (1) Any person who discharges, emits, or deposits into the environment any waste without being licensed under this Act and without being exempted under this Act from holding a licence shall be guilty of an offence and liable for a first offence to a penalty of not more than $500 and for a second or subsequent offence to a penalty of not more than $5,000 and in the case of a continuing offence to a daily penalty of not more than $2,000 for each day the

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offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of this section.

Fail to comply with conditions &c. of licence.

(2) Any person who, being the holder of a licence under this Act, contravenes or fails to comply with any condition, limitation, or restriction to which the licence is subject shall be guilty of an offence against this Act and liable to a penalty of not more than $5,000 and in the case of a continuing offence to a daily penalty of not more than $2,000 for each day the offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of or failure to comply with any such condition, limitation, or restriction (whichever is the earlier).

Orders to public authorities &c. to curtail services &c.

28. (1) The Authority may by notice in writing order the council of any municipality or any body established under any Act for a public purpose which has contravened or failed to comply with any of the conditions, limitations, or restrictions to which a licence issued to it under this Act is subject—

(*a*) to make no further connexions to or arrange no new collections for its waste collection and treatment system ; or

(*b*) refrain from issuing further building permits which would result in additions to the waste discharge or the waste treatment loading until its waste discharge is brought into compliance with the conditions, limitations, or restrictions of its licence.

Notice to cease discharge.

(2) Upon the recommendation of the Commission of Public Health that a waste discharge is or is likely to become a danger to public health the Authority shall by notice in writing order the person discharging the waste to cease discharging the waste or to alter the constituency or volume of the discharge (as the case requires).

Licensing of drainage systems.

(3) The Authority may by notice in writing to any body having jurisdiction and control over a drainage system define the extent to which the drainage system is required to be licensed under this Act.

(4) A notice under the foregoing provisions of this section addressed to a municipality or to a body established under any Act for a public purpose shall bind all officers of the municipality or body who shall comply with the requirements of the notice.

(5) The Authority may assign to a body or bodies having jurisdiction over a drain or drainage system duties with respect to the management and control of discharges into such drain or drainage system and may delegate to such body or bodies such powers duties and functions of the Authority (including its powers under this section) as the Authority considers necessary in that behalf.

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Purchaser &c. may continue under existing licence.

29. (1) A person who becomes the occupier of any premises in respect of which a licence under this Act is in force shall not be liable to any penalty under this Act for discharging, emitting, or depositing waste without a licence if he complies with the conditions limitations and restrictions of the licence previously in force and within thirty days after occupying the premises makes application under this Act for the transfer to him of the licence or makes application for a new licence.

(2) Where any such person applies for the transfer to him of a licence or for the issue to him of a new licence and the application is refused the applicant shall cease to discharge, emit, or deposit wastes from the premises within ten days after receiving notice of the refusal of his application and after the expiration of the period of ten days shall be deemed to be unlicensed.

Liability of licensed persons.

30. Subject to section 20 and section 31 no person shall be liable to any penalty under this Act with respect to the discharge, emission, or deposit of wastes if he holds a licence under this Act and complies with the conditions, limitations, and restrictions to which the licence is subject with respect to the extent of such wastes.

Authority may order licensed persons to cease discharge &c. in certain circumstances.

31. (1) Where several persons are licensed under this Act to discharge, emit, or deposit wastes into the same segment or element of the environment and it appears to the Authority that each of such persons is complying with the conditions, limitations, and restrictions of his licence but nevertheless the collective effect of the aggregate of such wastes has caused or is likely to cause a condition in that segment or element of the environment which if it were caused by one person would make him guilty of an offence against this Act the Authority, by notice in writing served upon all or any of such persons, may direct them or any one or more of them to take such action as is specified in the notice to eliminate or reduce the pollution so caused.

(2) Any person upon whom a notice under this section is served who fails to comply with the requirements of the notice shall be guilty of an offence.

Penalty : $2,000.

PART IV.—APPEALS.

Appeal against refusal of licence &c.

32. (1) Any applicant for a licence who is aggrieved by the refusal of the Authority or any protection agency to grant a licence under this Act or by the failure of the Authority or protection

agency to grant a licence under this Act within four months after application made may within thirty days after such refusal or the expiration of four months after the making of the application appeal to the Environment Protection Appeal Board against such refusal or failure.

(2) Any holder of a licence under this Act who is aggrieved by the revocation, suspension, or variation of a licence by the Authority may within thirty days after such revocation, suspension or variation appeal to the Environment Protection Appeal Board against such revocation, suspension, or variation.

(3) Any applicant for a licence who is aggrieved by any condition, limitation, or restriction to which his licence is subject may within thirty days after the issue of the licence appeal to the Environment Protection Appeal Board against the condition, limitation, or restriction.

(4) Any person whose application for a licence is refused or whose licence is suspended or revoked shall, pending the determination of the appeal brought under this Part, be deemed to be unlicensed.

Form of appeal.

33. (1) Every appeal to the Board shall be in writing and shall state shortly the grounds of the appeal.

Service.

(2) Every appeal shall be lodged with the Board within the time limited by section 32 and a copy of the appeal shall be served on the Authority or protection agency (as the case requires) within seven days thereafter.

Procedure.

34. (1) On the hearing of an appeal the Board shall act according to the substantial merits of the case and without regard to legal forms and technicalities and shall not be bound by the rules of evidence but, subject to the requirements of justice, may inform itself on any matter in any manner it thinks fit.

Inspection of property.

(2) For the purposes of an appeal the Board or any member of the Board may at all reasonable times enter into and upon and inspect—

(*a*) the land or building to which the appeal relates ; and

(*b*) any other land or building with the consent of the occupier, or, in the absence of any such consent, after two clear days' notice has been given to the occupier thereof (if any)—

and any person who obstructs or hinders any member of the Board in so doing or refuses admission to any land or building pursuant to notice given under this sub-section shall be guilty of an offence against this Act.

Penalty : $500.

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Appearance of parties.

(3) Any party to an appeal may appear and be heard before the Board personally or by a barrister and solicitor or by a person authorized in that behalf by the party.

Submissions.

(4) Any submission may be made to the Board orally or in writing or both orally and in writing.

(5) Upon the hearing of an appeal the appellant shall not be restricted to the grounds stated in his appeal nor shall the authority or protection agency be restricted to the grounds for revocation, variation, or refusal to grant a licence stated in the notice of its decision thereon but where any new ground or matter not so stated is raised on the appeal the Board (unless it is of opinion that the new ground or matter is of no substance or irrelevant) shall ensure that the other party to the appeal has a reasonable opportunity of considering and replying to that ground or matter and for that purpose may adjourn the hearing subject to such terms as to costs or otherwise as it thinks just in the circumstances.

Order on appeal.

35. (1) By its determination of any appeal the Board may—

(*a*) direct that a licence shall or shall not be issued, suspended, revoked, or varied ; or

(*b*) direct that a licence issued shall or shall not contain a specified condition or be subject to a specified variation of any condition.

(2) On determining an appeal the Board shall deliver to each party a statement in writing of the reasons for its determination.

(3) Subject to section 36 the determination of an appeal by the Board shall be final and shall be given effect.

Reference to Supreme Court.

36. (1) The Board may, if it thinks fit, of its own motion or on the application of any party refer any question of law to the Supreme Court and the Supreme Court shall give its opinion thereon.

(2) Subject to the *Supreme Court Act* 1958 the judges of the Supreme Court may make rules for or with respect to references to the Court under sub-section (1) including rules with respect to costs.

(3) Any party to an appeal under this Part may within fourteen days after the determination of the appeal by the Board appeal to the Supreme Court on any question of law as if the determination were an order of a Magistrates' Court and the provisions of Division 3 of Part V. of the *Justices Act* 1958 shall so far as those provisions are applicable and with such adaptations as are necessary extend and apply accordingly.

(4) Except as provided in sub-section (3) there shall be no appeal against a determination of the Board.

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Board to publish bulletin of cases.

37. For the guidance of persons wishing to bring appeals under this Part the Board shall cause to be published from time to time a report or bulletin of important or typical determinations made by it.

PART V.—CLEAN WATER.

Discharges &c. to comply with policy.

38. The discharge or deposit of wastes into waters of the State of Victoria shall at all times be in accordance with declared State environment protection policy specifying acceptable conditions for the discharge or deposit of wastes into waters in the environment and shall comply with any standards prescribed therefor under this Act.

Pollution of water.

39. (1) No person shall pollute any waters or cause or permit any waters to be polluted so that the physical, chemical, or biological condition of the waters is so changed as to make or be reasonably expected to make those waters or any part of those waters unclean, noxious, poisonous or impure, detrimental to the health, welfare, safety, or property of human beings, poisonous or harmful to animals, birds, wildlife, fish or other aquatic life, or to plants or detrimental to any beneficial use made of those waters.

(2) Without in any way limiting the generality of sub-section (1) a person contravenes that sub-section if—

(*a*) he places in or on any waters or in a place where it may gain access to any waters any matter, whether solid, liquid, or gaseous, that is prohibited by or under this Act or does not comply with any standard prescribed for that matter ;

(*b*) he places any waste, whether solid, liquid, or gaseous, in a position where it falls, descends, drains, evaporates, is washed, is blown, or percolates, or is likely to fall, descend, drain, evaporate, be washed, be blown, or percolate into any waters or onto the bed of any river, stream, or other waterway, when dry, or knowingly or through his negligence, whether directly or indirectly, causes or permits any such matter to be placed in such a position ;

(*c*) he places waste on the bed, when dry, of any river, stream, or other waterway or knowingly or through his negligence causes or permits any waste to be placed on such a bed ; or

(*d*) he causes the temperature of receiving waters to be raised or lowered by more than the prescribed limits.

Penalty : $5,000 and in the case of a continuing offence to a daily penalty of $2,000 for each day the offence continues after conviction or after service by the Authority or a protection agency upon the defendant of notice of contravention of the provisions of this section (whichever is the earlier).

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PART VI.—CLEAN AIR.

Discharges &c. to comply with policy.

40. The discharge or emission of wastes into the atmosphere shall at all times be in accordance with declared State environment protection policy specifying acceptable conditions for discharging or emitting wastes into the atmosphere and shall comply with any standards prescribed therefor under this Act.

Pollution of atmosphere.

41. (1) No person shall pollute the atmosphere or cause or permit the atmosphere to be polluted so that the physical, chemical, or biological condition of the atmosphere is so changed as to make or reasonably be expected to make the atmosphere or any part thereof unclean, noxious, poisonous, or impure, detrimental to the health, welfare, safety, or property of human beings, poisonous or harmful to animals, birds, wildlife or plants or so as to be detrimental to any beneficial use of the atmosphere.

(2) Without in any way limiting the generality of sub-section (1) a person contravenes that sub-section if—

(*a*) he places in or so that it may be released into the atmosphere any matter, whether liquid, solid, or gaseous, that is prohibited by or under this Act to be placed in the atmosphere or does not comply with any standard prescribed therefor under this Act;

(*b*) he causes or permits the discharge of odours which by virtue of their nature, concentration, volume, or extent are obnoxious or unduly offensive to the senses of human beings;

(*c*) he burns rubbish otherwise than at times or in the manner or place prescribed;

(*d*) he uses an internal combustion engine not equipped with any device required by the regulations to be fitted to such engine for the prevention of pollution; or

(*e*) he uses or burns any fuel which is prohibited by the regulations.

Failure to fit prescribed control devices an offence.

42. (1) Any person who constructs, sells, instals, or offers to sell or instal any machinery, vehicle, or ship required by or under this Act to be fitted or equipped with any device for preventing or limiting pollution of the atmosphere without the machinery, vehicle, or ship being so fitted or equipped shall be guilty of an offence.

Selling prohibited fuel an offence.

(2) Any person who in any locality in which the use of a fuel is prohibited by or under this Act sells or offers for sale or uses such fuel shall be guilty of an offence.

Penalty.

43. Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence against this Act and liable to a penalty of not more than $5,000 and by

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the case of a continuing offence to a daily penalty of not more than $2,000 for each day the offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of the provisions of this Part (whichever is the earlier).

PART VII.—CONTROL OF SOLID WASTES AND SOIL POLLUTION.

Discharges &c. to comply with policy.

44. The discharge of wastes into or the deposit of wastes in or on the soil shall at all times be in accordance with declared State environment protection policy specifying acceptable standards and conditions therefor and shall comply with any standards applicable under this Act.

Pollution of soil.

45. (1) No person shall pollute or cause or permit to be polluted any soil or the surface of any land so that the physical, chemical, or biological condition of the soil or surface is so changed as to make or be reasonably expected to make the soil or the produce of the soil poisonous or impure, harmful or potentially harmful to the health or welfare of human beings, poisonous or harmful to animals, birds, wildlife or plants, obnoxious or unduly offensive to the senses of human beings or so as to be detrimental to any beneficial use of the land.

(2) Without in any way limiting the generality of sub-section (1) a person contravenes that sub-section if—

(*a*) he places in or on any soil or in any place where it may gain access to any soil any matter, whether liquid, solid, or gaseous, that is prohibited by or under this Act or does not comply with the standard prescribed by the regulations for that matter;

(*b*) he establishes on any land a refuse dump, garbage tip, soil and rock disposal site, sludge deposit site, waste-injection well or otherwise uses land for the disposal of or repository for solid or liquid wastes so as to be obnoxious or unduly offensive to the senses of human beings or interfere with underground water or be detrimental to any beneficial use of the soil or the surface of the land.

Penalty.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a penalty of not more than $5,000 and in the case of a continuing offence to a daily penalty of not more than $2,000 for each day the offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of the provisions of this section (whichever is the earlier).

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Part VIII.—Control of Noise.

Emission of noise to comply with policy.

46. The emission of noise shall at all times be in accordance with State environment protection policy specifying acceptable conditions for emitting noise and shall comply with any standards or limitations prescribed therefor under this Act.

Discharge of certain noise to be licensed.

47. No person shall emit or cause or suffer to be emitted noise greater in volume, intensity, or quality than the levels prescribed for tolerable noise without first obtaining a licence under this Act.

Objectionable noise an offence.

48. (1) Any person who emits or causes or suffers to be emitted objectionable noise within the meaning of the regulations shall be guilty of an offence.

Excessive noise an offence in certain circumstances.

(2) Any person who without a licence or contrary to any condition, limitation, or restriction to which a licence under this Act is subject emits or causes or suffers to be emitted noise that is greater in volume, intensity, or quality than the standard fixed by the regulations for the emission of noise which is tolerable noise in the circumstances shall be guilty of an offence.

Penalty.

(3) Any person who is guilty of any offence against any of the provisions of this section shall be liable to a penalty of not more than $5,000 and in the case of a continuing offence to a daily penalty of not more than $2,000 for each day the offence continues after conviction or after service by the Authority or a protection agency on the defendant of notice of contravention of the provisions of this section (whichever is the earlier).

Part IX.—Control of Litter.

Policy.

49. (1) The Governor in Council may by Order under section 16 declare State environment protection policy with respect to the removal, disposal, or reduction of litter in the environment.

(2) For the purposes of this Part "litter" means any article or thing prescribed to be litter and includes container, rubbish, refuse, paper, glass, food, motor vehicle or parts thereof, and any abandoned or unwanted article or thing.

Notice to remove litter.

50. Where litter is deposited in any place, whether public or private, and the Authority considers that the circumstances are such that the litter is or is likely to become detrimental to the health, safety, or welfare of members of the public, unduly offensive to the senses of human beings, or a hazard to the environment the Authority may, by notice in writing, direct any person or body of persons which the Authority considers has the means and equipment so to do to remove or dispose of the litter or to take such action in relation to the litter as is specified in the notice.

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Cost of removing litter may be recovered against person responsible.

51. The cost of removing or otherwise disposing of or reducing litter pursuant to notice given under section 50 may be recovered in any court of competent jurisdiction against any person proved to have deposited the litter as a debt due to the Authority and when recovered shall be paid to the Consolidated Fund.

Cost may become a charge on land.

52. Where proceedings have been taken under section 51 against a person depositing litter and that person is the owner of the land upon which the litter is deposited but such person cannot be found the cost of removing or otherwise disposing of or reducing the litter shall become a charge on the land after advertisement in the prescribed form has been published three times in a newspaper circulating in the locality of such land.

Failure to comply with notice an offence.

53. Any person to whom a notice in writing under section 50 is directed who fails without reasonable cause to comply with the requirements of the notice shall be guilty of an offence.

Penalty: $500.

PART X.—GENERAL.

Furnishing of information.

54. (1) The Authority may by notice in writing served on the occupier of any premises require that occupier to furnish to the Authority within fourteen days or such longer period as is specified in the notice such information as to any manufacturing, industrial, or trade process carried on in or on the premises or as to any wastes discharged or likely to be discharged therefrom as is specified in the notice.

Penalty.

(2) Any person who refuses, fails, or neglects to comply with any requirement made under this section shall be guilty of an offence.

Penalty: $1,000.

Information not admissible in evidence in certain circumstances.

(3) Any information furnished or statement made to the Authority pursuant to any requirement made under sub-section (1) shall not if the person furnishing the information or making the statement objects, at the time of furnishing the information or statement, to doing so on the ground that it might tend to incriminate him, be admissible in evidence upon any proceedings against that person for an offence except the offence of refusing or failing to comply with the requirements of a notice given under this section.

(4) Nothing in this section shall prevent any such requirement being made at intervals of not less than fourteen days and the penalty prescribed being incurred with respect to refusal or failure to furnish information or to make a statement with respect to each such requirement.

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Powers &c. of authorized officer.

55. (1) An authorized officer may at any time enter any premises used as a factory or any premises in which an industry or trade is being carried on or may at any reasonable time enter any other premises which discharge wastes or pollutants and may therein—

(*a*) examine and inspect any apparatus, equipment or works used for or in connexion with the discharge of wastes or pollutants ;

(*b*) take and remove samples of any wastes or pollutants that are being or are likely to be, or are of a kind that are usually, discharged from the premises ;

(*c*) take and remove such samples and make such examination and inquiry and tests upon such samples as he considers necessary to ascertain whether any of the provisions of this Act or of any requirements made under this Act or the conditions, limitations, or restrictions to which any licence or approval is subject are being complied with.

Photographs.

(2) In the course of his duties an authorized officer may take such photographs on any land or premises whatsoever as he considers necessary.

Furnishing of information.

(3) An authorized officer may, by notice in writing, require—

(*a*) the occupier of any premises from which pollutants are being or are usually or are reasonably expected to be discharged to produce to the authorized officer any reports, books, plans, maps, or documents relating to the discharge from the premises of pollutants or relating to any manufacturing, industrial, or trade process carried on at those premises or data from any monitoring equipment or programme providing information as to waste discharges, emissions, or deposits ; or

(*b*) any person or body to produce to the authorized officer any reports, books, plans, maps, or documents in the custody or possession of that person or body relating to any apparatus, equipment, or works used for the discharge, emission, or deposit of wastes—

and may take copies of any such reports, books, plans, maps, or documents.

Authority to be produced on entry to premises &c.

(4) The Authority shall cause to be issued to every authorized officer an authority in writing bearing an indorsed photograph of the officer and on applying for admission to any premises or place where he is empowered by this Act to enter the authorized officer shall, if requested so to do, produce the authority to the occupier of the premises.

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(5) Notwithstanding the provisions of sub-section (1) an authorized officer is not entitled to enter a private dwelling house or upon land used in connexion therewith unless he believes on reasonable grounds that pollutants are being discharged from those premises into the environment.

Obstruction &c.

(6) Any person who delays or obstructs an authorized officer or fails to comply with any requirement made by an authorized officer in the exercise of his powers under this Act or who, being the occupier of any premises, refuses to permit an authorized officer to do anything which he is authorized under this Act to do shall be guilty of an offence.

Penalty: $1,000.

Giving name and address.

56. (1) Any person found offending against any of the provisions of this Act shall on demand by an authorized officer give his name and place of residence.

(2) Any person reasonably suspected of committing an offence against this Act who refuses to give his name and place of residence upon demand by an authorized officer or member of the police force or who gives a false name or place of residence shall be guilty of an offence.

Penalty: $500.

(3) Any member of the police force may assist an authorized officer in the execution of his duty.

Analysts &c.

57. (1) The Authority may appoint—

(*a*) analysts for making analyses of samples taken for the purposes of this Act; and

(*b*) pollution control officers for inspecting and evaluating the records of monitoring and other prescribed equipment and installations for detecting the presence and quantity and nature of wastes and their affects on the receiving segments of the environment.

Certificate of analysis.

(2) Upon concluding an analysis of a sample the analyst shall prepare, sign, and deliver to the authorized officer submitting the sample for analysis a certificate in writing of the analysis.

(3) In the course of inspecting monitoring and other equipment or programmes and installations a pollution control officer shall report to the Authority or protection agency (as the case requires) in writing upon offences against this Act detected and recorded by such equipment programme or installations and setting forth the information supplied by such equipment programme or installation and the officer's evaluation of that information.

Certificate may be served with summons.

58. (1) Upon proceedings under this Act for an offence with respect to any sample which has been analysed by an analyst or with respect to an offence detected or detected and recorded by

monitoring

monitoring or other equipment or programmes or installations there may be served with the summons a copy of the analyst's certificate of the analysis or the pollution control officer's report (as the case requires).

(2) Service of a copy of an analyst's certificate or pollution control officer's report with a summons may be proved in any manner in which service of the summons may be proved and, where proof of the service of the summons is by affidavit, by stating in the affidavit that a copy of the analyst's certificate was served with the summons.

Certificate to be evidence in absence of notice.

(3) If the defendant does not give at least seven days notice in writing before the hearing that he requires the analyst or pollution control officer to be called as a witness a certificate purporting to be signed by him with respect to an analysis made by him or a copy of a pollution control officer's report purporting to be signed by him shall be sufficient evidence of the facts stated therein.

Certificate as to whether person licensed or not is *prima facie* evidence.

59. In any proceedings for offences against this Act or the regulations where it is necessary to prove that any person was or was not licensed under this Act on a certain date or for a certain period or that a licence was subject to any specified condition limitation or restriction or that a licence was suspended during a certain period a certificate in writing purporting to be signed by the proper officer of the Authority setting out that such person was or was not licensed under this Act on that date or any condition limitation or restriction to which a licence issued to such person is subject or for or during that period or that the licence of such person was suspended during such period shall be *prima facie* evidence of the facts stated therein.

Disclosure of information an offence.

60. Any person who discloses any information obtained by him in connexion with the administration or execution of this Act in relation to any manufacturing process or trade secret used in carrying on any particular undertaking shall, unless the disclosure was made with the consent of the person carrying on that undertaking or in connexion with the administration or execution of this Act or for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, be guilty of an offence against this Act.

Penalty : $5,000 or imprisonment for two years or both.

Service of notices.

61. Any notice to be given by the Authority under this Act may be served personally or by registered post at the last known place of abode or business of the person to whom it is addressed.

Abatement of pollution where owner cannot be found.

62. Where the owner of any premises from which pollutants are discharging or upon which a condition of pollution is likely to arise cannot be found the Authority may, notwithstanding

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anything to the contrary in this Act, take such action or cause such action to be taken to abate the pollution as it thinks fit—

(a) in case of emergency (of which the Authority shall be the sole judge)—immediately; and

(b) in any other case—after advertising its intention three times in a newspaper circulating in the locality—

and where the owner is the offender the cost of abating such pollution shall be a charge on the property.

Proceedings in Magistrates Courts.

63. Proceedings for an offence against this Act or the regulations shall be taken before a Magistrates' Court consisting of a stipendiary magistrate sitting alone and may be taken by any person authorized by the Authority or a protection agency (as the case requires).

Penalty for failing to obey order to abate pollution.

64. Where a person is convicted of an offence of pollution against any of the provisions of this Act the court by which he is convicted, in addition to imposing a penalty for the offence, may order that person to take such action within such time as is specified in the order and under the supervision of the Authority or a protection agency to prevent the continuance or recurrence of the offence and may extend the time so specified : and if, upon the expiration thereof the order has not been complied with the person so convicted shall be liable to a penalty not exceeding $2,000 for every day that the non-compliance continues after that time.

Saving of rights at law.

65. (1) Nothing in this Act or the regulations shall in any way affect any right any person may have at law to restrict or prevent the pollution of the environment or to obtain damages in respect thereof.

Orders for compensation.

(2) For the purposes of section 546 of the *Crimes Act* 1958 where any property of the Crown or resource of the State is damaged or injured in the course of committing an offence against this Act or the regulations the Authority may in any proceedings for such offence make application for an order for damages or compensation on behalf of Her Majesty and the court may make an order in favour of the Authority for such damages or compensation.

(3) All moneys recovered by the Authority under any such order shall be paid to the Consolidated Fund.

Abatement of pollution.

66. (1) Where any segment or element of the environment is polluted by any person in contravention of this Act a protection agency may and shall, if directed by the Authority so to do, take such action as is necessary to remove, disperse, destroy, or mitigate the pollution and may recover from that person all costs and expenses incurred in connexion therewith.

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(2) Where special circumstances exist the Authority may specify the particular method to be used to remove, disperse, destroy, or mitigate the pollution.

(3) Any such costs and expenses may be recovered in a court of competent jurisdiction as a debt due to the person or body by whom the costs and expenses were incurred.

(4) Where action is taken under sub-section (1) and the offender is the owner of any property concerned but cannot be found the costs and expenses shall become a charge on the property of the offender after advertisement in the prescribed form has been published three times in a newspaper circulating in the locality.

General penalty.

67. Any person who is guilty of an offence against this Act for which no penalty is expressly provided shall be liable to a penalty of not more than $500.

Delegation.

68. (1) The Authority may by instrument in writing delegate to protection agencies all or any of its powers and functions under this Act with respect to the issue of licences, the investigation of offences, the enforcement of this Act and research so that the delegated powers may be exercised by the delegate but no such delegation shall preclude the Authority from acting or relieve the Authority of any responsibility for protecting the environment and administering this Act.

(2) An instrument of delegation under sub-section (1) may delegate powers and functions to any class or classes of persons or bodies of persons designated in the instrument of delegation.

(3) A delegation may at any time be revoked or varied by the Authority by notice in writing to the delegate.

(4) Where any person or body of persons has by any other Act jurisdiction with respect to any segment or element of the environment in any locality the Authority may, unless the Minister otherwise approves, delegate the exercise of its powers and functions with respect to that segment or element of the environment in that locality to that person or body.

(5) The Treasurer of Victoria may out of moneys made available by Parliament for the purpose contribute towards the additional costs incurred by protection agencies in carrying out any duties and functions imposed upon or delegated to them by or under this Act or in carrying out research for the purposes of this Act.

Fees and penalties to be paid to the Consolidated Fund.

69. (1) All fees payable under this Act and all penalties for offences against this Act, when recovered, shall be paid to the Consolidated Fund.

(2) All fees under this Act paid to protection agencies shall be paid by them to the Authority for payment to the Consolidated Fund.

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Environment Protection Fund.

70. (1) There shall be kept in the Treasury in the Public Account as part of the Trust Fund an account to be called the " Environment Protection Fund ".

(2) Any moneys standing to the credit of the said fund may be invested in such securities as are approved by the Treasurer.

(3) Into the Environment Protection Fund there shall be paid—

(*a*) any moneys provided by Parliament for the purpose ;

(*b*) any interest derived from the investment of moneys standing to the credit of the fund ; and

(*c*) moneys repaid to the Treasurer upon advances made by the Treasurer under sub-section (4) and interest thereon.

Treasurer may make grants for works.

(4) Out of the Environment Protection Fund the Treasurer may make grants or advances to bodies incorporated under any Act for a public purpose for or towards the cost of carrying out any necessary works for the treatment or disposal of wastes in accordance with the provisions of this Act and the regulations in circumstances where existing facilities are or are likely to become inadequate for complying with the provisions of this Act.

(5) Advances under sub-section (4) shall be subject to such conditions for the repayment thereof and interest or otherwise as are agreed upon between the Treasurer and the body concerned.

Regulations.

71. (1) The Governor in Council on the recommendation of the Authority may make regulations for or with respect to—

(*a*) prescribing fees not exceeding $5,000 for examining plans, specifications, and information relating to installations or proposed installations the subject of applications for licences under this Act ;

(*b*) State environment protection policy or the classification or re-classification of any segment or element of the environment ;

(*c*) prescribing standards or criteria for the implementation of any declared State environment protection policy or classification for the protection of the environment and for protecting beneficial uses ;

(*d*) prescribing standards or criteria for determining when any matter action or thing is poisonous, noxious, objectionable, detrimental to health, or within any other description referred to in this Act ;

(*e*) prohibiting the discharge, emission, or deposit into the environment of any matter, whether liquid, solid, or gaseous or of radio-activity and prohibiting or regulating the use of any specified fuel ;

(*f*) prescribing

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(*f*) prescribing ambient air quality standards and emission standards and specifying the maximum permissible concentrations of any matter that may be present in or discharged into the atmosphere ;

(*g*) prohibiting the use of any equipment, facility, vehicle, or ship capable of causing pollution or regulating the construction, installation, or operation thereof so as to prevent or minimize pollution ;

(*h*) requiring the giving of pollution warnings or alerts ;

(*i*) prohibiting or regulating the open burning of refuse or other combustible matter ;

(*j*) regulating the establishment of sites for the disposal of solid or liquid wastes on or in land ;

(*k*) defining objectionable noise and prescribing standards for tolerable noise ;

(*l*) further defining litter for the purposes of this Act ;

(*m*) prohibiting or regulating bathing, swimming, boating or other aquatic activity in or around any waters that may be detrimental to health or welfare or for preventing pollution ;

(*n*) generally the prevention, control, abatement, or mitigation of pollution ;

(*o*) prescribing penalties of not more than $400 for any breach of the regulations and in the case of continuing offences imposing a daily penalty of not more than $100 for every day the offence continues after conviction or notice under this Act in addition to any other penalty ;

(*p*) any matter or thing which by this Act is authorized or required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying this Act into effect.

(2) Any such regulation may be general or may be restricted in operation as to time, place, persons, or circumstances whether any such time place person or circumstance is determined or ascertainable before at or after the making of the regulation.

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PART V

PART V

WATER QUALITY

Prohibition of discharge of waste.

61. On and from a day to be fixed by proclamation, a person shall not, unless he is authorized by or under this Act or any other Act, cause, suffer or permit any waste to come into contact directly or indirectly with waters.

Penalty: Ten thousand dollars.

Default Penalty: One thousand dollars.

Water Quality Orders.

62. (1) The Minister may by Order served personally or by post on a person authorize that person to dispose of, disperse or discharge any wastes specified in that Order in a manner and subject to such conditions as are specified in that Order.

(2) An Order under subsection (1) of this section shall remain in force for such period, not exceeding five years, as is specified in the Order and upon the expiration of that period shall have no further force or effect.

Emergency powers.

63. (1) Notwithstanding any other provision of this Act or any other Act or law, the Minister may, in circumstances that he considers constitute an emergency, by notice in writing served personally or by post on any person and in relation to the period specified in that notice—

(*a*) authorize that person, subject to such conditions as may be specified in the notice, to discharge into any waters or to place in or on any land such wastes as are specified in the notice;

or

(*b*) prohibit that person from discharging into any waters or from placing on any land such wastes as are specified in the notice either absolutely or otherwise than in accordance with such conditions as are specified in the notice.

(2) A person who discharges waste into any waters or places waste on any land in accordance with a notice under subsection (1) of this section shall not be guilty of an offence against this Act only by reason of such discharge or placing.

(3) A person who discharges waste into any waters or places waste on any land in contravention of a notice under subsection (1) of this section is guilty of an offence against this Act and liable upon conviction to a penalty not exceeding ten thousand dollars.

(4) The Minister may in circumstances that he considers constitute an emergency take such action as he considers necessary for the prevention, abatement or mitigation of water pollution and may recover the reasonable costs of so doing as a debt due to the Minister from the person responsible for that water pollution.

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PART VI

APPEALS

Appeals.

64. (1) An appeal to the Tribunal shall lie—

(*a*) against the refusal to grant a licence or permit under this Act;

(*b*) against the imposition of any term or condition in respect of any licence or permit under this Act;

(*c*) against the refusal of a consent under section 52 of this Act;

(*d*) against the imposition of any term or condition in relation to a consent under that section;

(*e*) against any Order given under this Act or against the imposition of any term or condition of that Order.

(2) Except in the cases referred to in subsection (1) of this section, no appeal shall lie to the Tribunal.

(3) An appeal must be instituted in the prescribed manner and form.

(4) Subject to this Act, the Tribunal may, at the hearing of the appeal, uphold or quash the decision appealed against.

Proceedings before the Tribunal.

65. (1) The Tribunal shall give to any person who is a party to proceedings instituted before the Tribunal reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) Any party to proceedings before the Tribunal shall be entitled to appear personally or by counsel or other representative, but no person other than a legal practitioner shall be entitled to any fee or reward for such representation.

(4) Subsection (3) of this section shall not apply to an interpreter assisting a party in the presentation of his case provided that his fee does not exceed an amount fixed by the Tribunal either generally or in a particular case.

(5) In any proceedings the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Powers of Tribunal.

66. (1) In the exercise of its functions under this Act, the Tribunal may—

(*a*) by notice signed by the chairman, or the Registrar acting on the direction of the chairman, require the attendance before the Tribunal of any person;

(*b*) by notice signed by the chairman, or the Registrar acting on the direction of the chairman, require the production of any books, papers or documents;

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(c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit, and make copies of them, or of any of their contents;

(d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal or Registrar;

(e) require any person appearing before the Tribunal to answer any relevant questions put to him by the Tribunal or by any other person appearing before the Tribunal;

or

(f) enter upon and inspect, or authorize a person to enter upon and inspect, any land or premises for the purposes of any hearing before the Tribunal.

(2) Subject to subsection (3) of this section, if any person—

(a) who has been served with a notice to attend before the Tribunal fails without reasonable excuse to attend in obedience to the notice;

(b) who has been served with a notice to produce any books, papers or documents, fails without reasonable excuse to comply with the notice;

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal;

(d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal;

or

(e) refuses to permit the Tribunal, or a person authorized by the Tribunal, to enter upon any land or premises,

he shall be guilty of an offence and liable to a penalty of five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

Appeal not to suspend operation of direction, etc.

67. Subject to this Act, the institution of an appeal shall not suspend or otherwise affect the operation of any decision or direction subject to appeal.

Reasons for decision of Tribunal to be given.

68. The Tribunal shall give reasons in writing for any decision made by the Tribunal in any proceedings under this Act.

PART VII

MISCELLANEOUS

Power of acquisition.

69. The Minister may, subject to and in accordance with the Land Acquisition Act, 1969-1972, acquire land for the purposes of this Act.

Power to construct works.

70. The Minister may construct, operate and maintain such works as he considers necessary or desirable for—

(*a*) the observation, measurement or assessment of any water resources;

(*b*) the control or utilization of any water resources;

(*c*) the conserving of any water resources or the enhancement of their quality;

(*d*) the observation, measurement or assessment of any waste;

(*e*) the control or discharge of any waste;

(*f*) the treatment, storage or discharge of any waste waters for irrigation or other purposes;

(*g*) the drainage of any land on which any waters are used for irrigation purposes;

or

(*h*) any other purposes in connection with the administration of this Act.

Delegation.

71. (1) The Minister may delegate to any person any of his powers under this Act (except this power of delegation) and may revoke that delegation at any time.

(2) A delegation under subsection (1) of this section shall not prevent the exercise of any power by the delegator.

Authorized officer.

72. The Minister may by notice in the *Gazette* appoint a person or the holder for the time being of an office to be an authorized officer for the purposes of this Act.

Powers of authorized officers.

73. (1) An authorized officer may—

(*a*) enter and remain on any land or premises for the purposes of this Act;

and

(*b*) take and retain any samples of any waters or waste found therein or thereon.

(2) An authorized officer may require any person to answer any question that in his opinion may disclose information as to whether or not the provisions of this Act are being complied with, or may facilitate the exercise and performance of his powers and functions under this Act, whether that question is put to that person directly or through an interpreter.

AU - X - a - 2(v)

(3) An authorized officer may carry out such operations on a well to determine the condition of the well or of the soil, rock, or other water bearing material in which the well is situated or of waters as the Minister may authorize and specify in a notice served upon the owner of the land on which the well is situated.

(4) In the exercise of his powers under this section an authorized officer may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(5) A person shall not—

(a) hinder or obstruct an authorized officer or a person accompanying an authorized officer in the exercise by the authorized officer of the powers conferred on him by this section;

or

(b) refuse or fail to answer any question put to him by an authorized officer under subsection (2) of this section.

Penalty: Five hundred dollars.

(6) A person is not excused from answering any question put to him by an authorized officer under subsection (2) of this section on the grounds that the information disclosed thereby might tend to incriminate him, but such information shall not be admissible against him in any proceedings, civil or criminal, other than proceedings for an offence against this Act.

Protection of authorized officers.

74. No liability shall attach to an authorized officer for an act or omission by him in good faith and in the exercise, or purported exercise, of his powers or functions or in the discharge, or purported discharge, of his duties under this Act.

False or misleading information.

75. A person shall not in furnishing any information pursuant to this Act make, or cause to be made, any statement or representation that is to his knowledge false or misleading in a material particular.

Penalty: Five hundred dollars.

Evidentiary.

76. (1) In any proceedings for an offence against this Act an allegation in a complaint that—

(a) a person is an authorized officer;

(b) a person is the owner or occupier of any land or premises specified therein;

(c) a person is, or is not, the holder of a licence or permit under this Act;

(d) a specific watercourse is a Proclaimed Watercourse under this Act;

or

(e) a specific region is a Proclaimed Region under this Act,

shall be deemed to have been proved in the absence of proof to the contrary.

Code: AU-E-a-5 (i)

Country: Australia

Type of Regulation: Environmental

Name of Agency or Department: New South Wales. Commissioner of Inquiry

Program Title: NA

Initiation and Termination Dates: 1979-

Relevant Legislation: Environmental Planning and Assessment Act 1979, Section 119

(b) requiring officers and servants of the council to render all necessary assistance to the officer in the exercise of his functions in accordance with his appointment and any such officers and servants not to obstruct the officer in the exercise of his functions.

DIVISION 2.—*Public inquiries and settlement of disputes.*

Public inquiry.

119. (1) The Minister may at any time direct that an inquiry be held, in accordance with this section, by a Commission of Inquiry appointed under subsection (2) with respect to—

(a) any matter relating to the administration and implementation of the provisions of this Act or any environmental planning instrument;

(b) the environmental aspects of any proposed designated development the subject of a development application referred to in section 88 (3);

(c) the environmental aspects of any activity referred to in section 112 (1); or

(d) a proposal to constitute, alter or abolish a development area under section 132 or 133.

(2) Where, pursuant to subsection (1) or section 49 (1), 101 (5) or 118 (3), an inquiry is directed to be held, the Minister may appoint one or more Commissioners of Inquiry to constitute a Commission of Inquiry to hold the inquiry and may appoint one or more persons to assist such a Commission.

(3) Any person appointed under subsection (2) to assist a Commission of Inquiry shall be paid such remuneration and allowances as may be determined in respect of him by the Minister.

(4) Where there is more than one Commissioner of Inquiry constituting a Commission of Inquiry, the Minister shall appoint one of the Commissioners to preside at the proceedings of the Commission.

AU-E-a-5(ii)

(5) Except as provided in subsection (1), a Commission of Inquiry is not subject to directions by the Minister or any other person in relation to the contents of its report, findings or recommendations.

(6) A Commission of Inquiry constituted under this section shall hold an inquiry in accordance with the direction of the Minister or Director, as referred to in subsection (1) or (2), shall report its findings and recommendations to the Minister or Director, as the case may be, and shall, after so reporting, but subject to subsection (7), make public those findings and recommendations.

(7) A Commission of Inquiry shall not make public any evidence or matters in respect of which directions have been given under section 120 (5) (b) or matters the publication of which is excepted from section 120 (8).

Procedure at inquiries.

120. (1) Subject to this section, an inquiry by a Commission of Inquiry constituted under section 119 shall be held in public and evidence in the inquiry shall be taken in public and may be required to be taken on oath or affirmation.

(2) Before a Commission of Inquiry commences to hold an inquiry, it shall give reasonable notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold the inquiry, of the subject of the inquiry and of the time and place at which the inquiry is to be commenced.

(3) A Commissioner of Inquiry may, by writing signed by him, summon a person to appear before the Commission of Inquiry at a time and place specified in the summons to give evidence and to produce such books and documents (if any) as are referred to in the summons.

(4) A person served with a summons to appear as a witness at an inquiry by a Commission of Inquiry shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty : $1,000.

(5) Where a Commission of Inquiry is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

(a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or

(b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission,

or do both of those things.

AU-E-a-SCi

(6) A Commission of Inquiry may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(7) Where a Commission of Inquiry considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.

(8) Where evidence is given to a Commission of Inquiry by a written statement in accordance with subsection (6) or (7), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter the publication of which, in the opinion of the Commission, would be contrary to the public interest by reason of its confidential nature or for any other reason.

(9) Subject to this section and the regulations—

(a) the procedure to be followed at an inquiry by a Commission of Inquiry shall be determined by the Commission; and

(b) a Commission of Inquiry is not bound by the rules of evidence.

(10) An oath or an affirmation may be administered for the purposes of this section by a Commissioner of Inquiry or by any person authorised by the Oaths Act, 1900, to administer a judicial oath.

(11) Nothing in this section derogates from any law relating to Crown privilege.

Settlement of disputes.

121. (1) Where a dispute arises between the Department or the Director and a public authority, other than a council, with respect to—

(a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or

(b) the exercise of any function conferred or imposed upon the Department or the Director or upon the public authority by or under this Act, the regulations or an environmental planning instrument,

a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.

(2) Where a dispute arises between a public authority (including the Department and the Director) and a council with respect to—

(a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or

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(b) the exercise of any function conferred or imposed upon the public authority or council by or under this Act, the regulations or an environmental planning instrument,

a party to the dispute may submit that dispute to the Minister for settlement in accordance with this section.

(3) On the submission of a dispute to the Premier or the Minister under subsection (1) or (2), the Premier or Minister may appoint a person to hold an inquiry and make a report to him with respect to that dispute or may himself hold an inquiry with respect to that dispute.

(4) After the completion of an inquiry held under subsection (3) and, where a report is made to the Premier or the Minister under that subsection, after consideration by him of that report, the Premier or the Minister, as the case may be, may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as he thinks fit.

(5) An order made by the Premier or the Minister under subsection (4) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

(6) The Department, the Director, a council or other public authority, as the case may be, shall comply with an order given to it or him under subsection (4), and shall, notwithstanding the provisions of any Act, be empowered to comply with any such order.

(7) The provisions of any other Act relating to the settlement of disputes do not apply to the settlement of a dispute referred to in subsection (1) or (2).

DIVISION 3.—*Orders of the Court.*

122. In this Division—

(a) a reference to a breach of this Act is a reference to—
  (i) a contravention of or failure to comply with this Act; and
  (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and
(b) a reference to this Act includes a reference to—
  (i) an environmental planning instrument;
  (ii) a consent granted under this Act; and
  (iii) a condition subject to which a consent referred to in subparagraph (ii) was granted.

Restraint, etc., of breaches of this Act.

123. (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

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(2) Proceedings under this section may be brought by a person on his own behalf or on behalf of himself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

Order of the Court.

124. (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

(2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—

(a) where the breach of this Act comprises a use of any building, work or land—restrain that use:

CODE:AU-X-a-7(i)

Country: Australia

Type of Regulation: Consumer protection

Name of Agency or Department: State Consumer Agencies (various)

Program Title: NA

Initiation and Termination Dates:

Relevant Legislation: South Australia: Consumer Tribunal Act 1982; Victoria, Market Court Act 1978.

No. 38 of 1982

An Act to establish a tribunal to exercise statutory jurisdictions formerly exercised by various boards and tribunals; to confer certain powers on the tribunal; and for other purposes.

PART I

PRELIMINARY

PART I

1. This Act may be cited as the "Commercial Tribunal Act, 1982". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. This Act is arranged as follows: Arrangement of Act.

PART I—PRELIMINARY

PART II—THE COMMERCIAL TRIBUNAL

DIVISION I—CONSTITUTION OF THE TRIBUNAL

DIVISION II—MANNER IN WHICH TRIBUNAL IS TO ARRIVE AT ITS DECISIONS

DIVISION III—PROCEDURES AND POWERS OF THE TRIBUNAL

DIVISION IV—CASES STATED AND APPEALS

PART III—MISCELLANEOUS

4. In this Act, unless the contrary intention appears— Interpretation.

"the Commissioner" means the person for the time being holding or acting in the office of Commissioner for Consumer Affairs:

"the Registrar" means the person for the time being holding or acting in the office of Commercial Registrar under this Act:

"relevant Act" means an Act that confers jurisdiction on the Tribunal:

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PART I

"the Senior Judge" means the person for the time being holding, or acting in, the office of Senior Judge under the Local and District Criminal Courts Act, 1926-1982:

"the Tribunal" means the Commercial Tribunal established under this Act.

PART II

PART II

THE COMMERCIAL TRIBUNAL

DIVISION 1

DIVISION I—CONSTITUTION OF THE TRIBUNAL

Establishment of the Tribunal.

5. There shall be a tribunal entitled the "Commercial Tribunal".

Constitution of the Tribunal.

6. (1) Subject to this section, the Tribunal shall be constituted in relation to the hearing of any proceedings of the following members:

(*a*) the Chairman or a Deputy Chairman of the Tribunal;

(*b*) a member of the appropriate panel constituted under section 8 (1) and selected by the Chairman or a Deputy Chairman of the Tribunal to sit at the hearing of those proceedings;

(*c*) a member of the panel constituted under section 8 (2) and selected by the Chairman or a Deputy Chairman of the Tribunal to sit at the hearing of those proceedings.

(2) The membership of the Tribunal may if the Chairman or a Deputy Chairman of the Tribunal, in a particular case, so determines include one or more members of a panel constituted under section 8 (3).

(3) Where proceedings (including proceedings founded upon an application) involving the same or similar questions are commenced under two or more of the relevant Acts and the Chairman or a Deputy Chairman of the Tribunal determines that it would be expedient to consolidate those proceedings and that the consolidation would not unfairly prejudice any party to the proceedings, he may direct that the proceedings be consolidated accordingly and in that event a member shall be selected under subsection (1) (*b*) from each panel constituted in relation to the Acts under which the consolidated proceedings arise.

(4) The rules of the Tribunal may provide that, in relation to the exercise of specified powers or functions, or in relation to matters of a specified class, the Tribunal may be constituted solely of the Chairman or a Deputy Chairman and where the rules so provide, the Tribunal may be constituted accordingly.

(5) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.

(6) Where the provisions of a relevant Act deal with the manner in which the Tribunal is to be constituted for the purposes of proceedings under that Act, this section shall be construed subject to those provisions.

The Chairman and Deputy Chairmen of the Tribunal.

7. (1) There shall be—

(*a*) a Chairman of the Tribunal;

and

(*b*) not more than five Deputy Chairmen of the Tribunal.

(2) The Chairman and Deputy Chairmen of the Tribunal shall be appointed by the Governor.

(3) A person is not eligible for appointment as the Chairman or a Deputy Chairman of the Tribunal unless he is—

(*a*) a District Court Judge;

or

(*b*) a legal practitioner of not less than seven years standing.

(4) A District Court Judge shall not be appointed as the Chairman or a Deputy Chairman of the Tribunal except upon the nomination of the Senior Judge.

(5) If the Chairman is absent, or unavailable to act in his office, a Deputy Chairman nominated by the Minister may act in the office of the Chairman.

(6) A District Court Judge is not precluded by appointment as the Chairman or a Deputy Chairman of the Tribunal from performing any other judicial functions.

8. (1) The Governor may in relation to each of the relevant Acts establish a panel consisting of members representative of the interests of the class or classes of persons who are licensed or registered under the relevant Act, or whose conduct is otherwise regulated under the relevant Act. Panels.

(2) The Governor may establish a panel consisting of members representative of members of the public who deal with the persons who are licensed or registered under the relevant Acts or whose conduct is otherwise regulated under the relevant Acts.

(3) The Governor may establish panels of experts whose expertise would in the opinion of the Governor be of value to the Tribunal.

(4) A member of a panel shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of that term, shall be eligible for re-appointment.

(5) The Governor may remove a member of a panel from office for—

(*a*) mental or physical incapacity to carry out satisfactorily the duties of his office;

(*b*) neglect of duty;

or

(*c*) dishonourable conduct.

(6) A person ceases to be a member of a panel if—

(*a*) he dies;

(*b*) his term of office expires;

(*c*) he resigns by notice addressed to the Minister;

or

(*d*) he is removed under subsection (5).

(7) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of panels established under this Act.

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Allowances and expenses.

9. A member of the Tribunal shall be entitled to such allowances and expenses as may be determined by the Governor.

The Commercial Registrar.

10. (1) There shall be a Commercial Registrar.

(2) The Commercial Registrar must be a legal practitioner.

(3) The Commercial Registrar shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967-1981, and the office of the Commercial Registrar may be held in conjunction with any other office in the Public Service of the State.

(4) The Commercial Registrar shall be the executive officer of the Tribunal and shall exercise such powers, discretions and functions—

(*a*) as may be conferred on, or assigned to, him by or under this Act or any other Act;

or

(*b*) as may be delegated to him in pursuance of subsection (5).

(5) The Chairman of the Tribunal may delegate to the Commercial Registrar any of his powers, discretions and functions of an administrative nature.

(6) The Commercial Registrar may delegate to any officer of the Public Service any functions of a clerical nature assigned (by delegation or otherwise) to him.

(7) A delegation under subsection (5) or (6)—

(*a*) is revocable at will;

and

(*b*) does not prevent the Chairman or the Commercial Registrar (as the case may require) from acting personally in any matter.

Validity of acts of the Tribunal and immunity of its members.

11. (1) An act or proceeding of the Tribunal shall not be invalid by virtue only of a vacancy in the membership of a panel from which members of the Tribunal are drawn.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise of his or its powers or functions or in the discharge of his or its duties.

DIVISION II

DIVISION II—MANNER IN WHICH TRIBUNAL IS TO ARRIVE AT ITS DECISIONS

Decisions in cases where Tribunal sits *in banco*.

12. Where the Tribunal is constituted of the Chairman or a Deputy Chairman and two or more other members—

(*a*) the Chairman or Deputy Chairman shall preside at the proceedings;

(*b*) the Chairman or Deputy Chairman shall determine any question relating to the admissibility of evidence and any other question of law or procedure;

and

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(*c*) on any other question a decision in which a majority of the members of the Tribunal (excluding any drawn from a panel constituted under section 8 (3)) concurs shall be a decision of the Tribunal and, if they are equally divided in opinion, the question shall be decided in accordance with the opinion of the Chairman or Deputy Chairman.

Principles upon which Tribunal to make decisions.

13. (1) The Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and, subject to subsection (2) and the provisions of any other Act, shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(2) The Tribunal shall be bound by the rules of evidence in disciplinary proceedings.

DIVISION III—PROCEDURES AND POWERS OF THE TRIBUNAL

DIVISION III

Proceedings before the Tribunal.

14. (1) The Tribunal shall give a party to proceedings before the Tribunal reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in his absence.

(3) The Commissioner may appear personally in proceedings before the Tribunal or may be represented at such proceedings by counsel or an officer of the Public Service.

(4) A party to proceedings before the Tribunal (not being the Commissioner) shall be entitled to appear—

(*a*) personally or by counsel;

or

(*b*) by leave of the Tribunal—by some other representative.

Powers of the Tribunal.

15. (1) The Tribunal may—

(*a*) by summons signed on behalf of the Tribunal by the Registrar, require the attendance before the Tribunal of any person;

(*b*) by summons signed on behalf of the Tribunal by the Registrar, require the production of any books, papers or documents;

(*c*) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;

(*d*) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal;

or

(e) require any person appearing before the Tribunal, including a person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if any person—

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;

(b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;

(c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member thereof, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of a contempt of the Tribunal.

(3) A contempt of the Tribunal is a summary offence punishable by a fine not exceeding two thousand dollars.

(4) A person shall not be obliged to answer a question, or to produce books, papers or documents, under this section if—

(a) the answer to the question or the contents of the books, papers or documents would tend to incriminate him;

or

(b) by answering the question or producing the books, papers or documents he would commit a breach of legal professional privilege.

(5) In the course of any proceedings, the Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court or tribunal that may be relevant to the proceedings.

Ordersf or fines or costs.

16. The Tribunal may make such orders for costs as the Tribunal considers just and reasonable.

Reasons for decisions of Tribunal.

17. Where a party to any proceedings before the Tribunal has, within seven days after the Tribunal has made a decision or order in those proceedings, requested the Tribunal to give reasons in writing for the decision or order, the Tribunal shall give reasons in writing for its decision or order.

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PART II
DIVISION III

Operation of order may be suspended.

18. (1) Where an order has been made by the Tribunal, and the Tribunal, or the Supreme Court, is satisfied that an appeal against the order has been instituted, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the Supreme Court has suspended the operation of an order under subsection (1), the Supreme Court may terminate the suspension.

DIVISION IV—CASES STATED AND APPEALS

DIVISION IV

Case stated.

19. The Tribunal may state a case upon any question of law for the opinion of the Supreme Court.

Appeal.

20. (1) A party to proceedings before the Tribunal who is dissatisfied with a decision or order given or made by the Tribunal in those proceedings shall, subject to this section, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

(2) An appeal, if it involves a question of law, lies as of right but otherwise lies only by leave of the Tribunal or the Supreme Court.

(3) The appeal or application for leave to appeal must be instituted or made within one month of the making of the decision or order appealed against, but the Supreme Court or the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal or the application should be instituted or made within that period.

(4) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:

(*a*) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;

(*b*) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;

(*c*) make any further or other order as to costs or any other matter that the case requires.

Proceedings to lie to single Judge of Supreme Court.

21. For the purposes of a case stated or an appeal under this Division the Supreme Court shall be constituted of a single Judge but this subsection does not derogate from the power of such a Judge to reserve an appeal or question for hearing and determination by the Full Court.

Av-x-a-7(viii

No. 44 of 1983

An Act to amend the Commercial Tribunal Act, 1982.

[*Assented to 16 June 1983*]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. (1) This Act may be cited as the "Commercial Tribunal Act Amendment Act, 1983".

(2) The Commercial Tribunal Act, 1982, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Commercial Tribunal Act, 1982-1983".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Insertion of new s. 4a.

3. The following section is inserted in Part I of the principal Act after section 4:

Transitional provisions.

> 4a. (1) If, when the Tribunal acquires jurisdiction to hear and determine proceedings of a particular kind, any such proceedings have been commenced but not completed, the proceedings may be continued and determined by the Tribunal as if they had been commenced under the relevant Act by which the jurisdiction was conferred, as in force upon the conferral of that jurisdiction.
>
> (2) The Chairman of the Tribunal may give directions in relation to the constitution of the Tribunal for the purpose of hearing and determining proceedings to which subsection (1) relates, and such directions shall have effect notwithstanding any conflict between those directions and the provisions of this Act.
>
> (3) Where an order of a kind that the Tribunal has jursidiction to make under the provisions of a relevant Act is in force immediately before the Tribunal acquires jurisdiction to make such an order, the order shall be deemed to be an order of the Tribunal and shall have effect as if made under the relevant Act by which the jurisdiction was conferred, as in force upon the conferral of that jurisdiction.

Amendment of s. 6—
Constitution of the Tribunal.

4. Section 6 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage "hearing of any proceedings" the passage "or the conduct of any other business";

(b) by striking out from subsection (1) the passage "to sit at the hearing of those proceedings", twice occurring, and substituting, in each case, the passage "to be a member of the Tribunal for the purpose of the hearing of those proceedings or the conduct of that business";

(c) by striking out from subsection (4) the passage "rules of the Tribunal" and substituting the word "regulations";

(d) by striking out from subsection (4) the passage "where the rules" and substituting the passage "where the regulations";

(e) by inserting in subsection (5) after the word "proceedings" the passage "or conducting separate business of the Tribunal";

and

(f) by inserting in subsection (6) after the word "proceedings" the passage "or any other business".

Amendment of s. 10—
The Commercial Registrar.

5. Section 10 of the principal Act is amended by striking out subsections (4), (5), (6) and (7) and substituting the following subsections:

> (4) The Commercial Registrar shall be the executive officer of the Tribunal and shall exercise such powers, discretions and functions as may be conferred on, or assigned to, him by or under this Act or any other Act.
>
> (5) The Commercial Registrar may, with the approval of the Tribunal or the Chairman, exercise the powers, discretions and functions of the Tribunal in relation to matters of a prescribed class.
>
> (6) Where the Commercial Registrar is exercising the powers, discretions and functions of the Tribunal in relation to any matter pursuant to subsection (5), he may, and shall if the Tribunal or the Chairman so directs, refer the matter to the Tribunal for determination by the Tribunal.

Amendment of s. 12—
Decisions in cases where Tribunal sits *in banco*.

6. Section 12 of the principal Act is amended by striking out from paragraph *(a)* the passage "at the proceedings".

Amendment of s. 15—
Powers of the Tribunal.

7. Section 15 of the principal Act is amended—

(a) by striking out from subsection (2) the passage "Subject to subsection (3), if" and substituting the word "If";

(b) by striking out from subsection (5) the passage "court or tribunal", twice occurring, and substituting, in each case, the passage "court, tribunal or board";

and

(c) by inserting after subsection (5) the following subsection:

> (6) Where a person takes a proceeding before the Tribunal frivolously, vexatiously or for an improper purpose, the Tribunal may—

(a) dismiss or annul the proceeding;

and

(b) order the party by whom it was taken to pay to any other party compensation for any consequent embarrassment, inconvenience and expense that he has suffered or incurred.

Amendment of s. 20—Appeal.

8. Section 20 of the principal Act is amended by inserting in subsection (1) after the word "section" the passage "and any other relevant statutory provision".

Repeal of s. 25 and substitution of new sections.

9. Section 25 of the principal Act is repealed and the following sections are substituted:

Enforcement of orders.

25. (1) Where a judgment or order for payment of a pecuniary sum is given or made by the Tribunal, the Registrar shall, upon application by a party to the proceedings in which the judgment or order was given, or a person claiming through or under such a party, issue a certified copy of the judgment or order.

(2) Where—

(a) a certified copy of a judgment or order is lodged with the clerk of a local court;

and

(b) the fee (if any) payable upon lodgment is paid to the clerk,

the clerk shall register the judgment or order and proceedings may then be taken upon it as if it were a judgment or order of the court in which it is registered.

(3) The court in which judgment or order is registered under this section shall be—

(a) the Local Court of Adelaide;

or

(b) some other local court, being the local court nearest to the place at which the person who is liable upon the judgment or order resides.

Regulations.

26. (1) The Governor may make such regulations as are contemplated by this Act or any other Act conferring jurisdiction on the Tribunal, or as are necessary or expedient for the purposes of this Act or any other Act conferring jurisdiction on the Tribunal.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) provide for the constitution of panels from which members of the Tribunal are to be drawn and require consultation with specified bodies in relation to the membership of such panels;

(b) prescribe matters relevant to the practice and procedure of the Tribunal;

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(c) provide for the settlement or attempted settlement, by conciliation, of disputes between parties to proceedings before the Tribunal;

(d) provide for the enforcement of judgments and orders of the Tribunal (other than judgments or orders for payment of pecuniary sums);

(e) prescribe information to be included in the registers to be kept under this Act;

(f) assign functions to the Registrar and regulate the manner in which they are to be carried out;

(g) prescribe and provide for the payment of fees;

and

(h) prescribe penalties (to be recoverable summarily) not exceeding five hundred dollars for contravention of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor